STATUS OF CONTINUING DISABILITY REVIEWS

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

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CONTENTS

Page

Press release of Friday, February 17, 1984, announcing the hearing 1
Opening statement of Hon. J.J. Pickle 4

WITNESSES

Ad Hoc Committee on Social Security Disability, Esther Pina 96
Association of Administrative Law Judges, Inc., George C. Pierce 89
Backman, Hon. Jack H., senate chairman, Massachusetts Special Commission on Social Security Disability 7
Bartels, Elmer C., Massachusetts Rehabilitation Commission, Executive Office of Human Services, Commonwealth of Massachusetts 31
Benoit, Edward, Maynard, MA 21
Commonwealth of Massachusetts:
  John Mudd, Executive Office of Human Services 23
  Elmer C. Bartels, Massachusetts Rehabilitation Commission, Executive Office of Human Services 31
DeNucci, Hon. A. Joseph, house chairman, Massachusetts Special Commission on Social Security Disability 10
Greater Boston Legal Services, Judith Saltzman 82
Ivanof, Damian T., Stop Abuse of the Disabled (SAD) 76
Locke, Albert, Waltham, MA 19
Massachusetts Special Commission on Social Security Disability:
  Hon. Jack H. Backman, senate chairman 7
  Hon. A. Joseph DeNucci, house chairman 10
Mudd, John, Executive Office of Human Services, Commonwealth of Massachusetts 23
Pierce, George C., Association of Administrative Law Judges, Inc 89
Pina, Esther, Ad Hoc Committee on Social Security Disability 96
Potvin, Arlene, Fall River, MA 71
Saltzman, Judith, Greater Boston Legal Services 82
Shannon, Hon. James M., a Representative in Congress from the State of Massachusetts 5
Stop Abuse of the Disabled (SAD), Damian T. Ivanof 76
Sweeney, John T., administrative law judge 92

SUBMISSIONS FOR THE RECORD

Conte, Hon. Silvio O., a Representative in Congress from the State of Massachusetts, letter and statement 13
Frank, Hon. Barney, a Representative in Congress from the State of Massachusetts, statement 15
New York State Department of Social Services, statement 103

STATUS OF CONTINUING DISABILITY REVIEWS

FRIDAY, FEBRUARY 24, 1984

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
Boston, MA.

The subcommittee met at 10 a.m., pursuant to notice, in room 222, the State House, Boston, MA, Hon. J.J. Pickle (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

[For immediate release Friday, Feb. 17, 1984]

HON. J.J. PICKLE (D., TEX.), CHAIRMAN, SUBCOMMITTEE ON SOCIAL SECURITY, COMMITTEE ON WAYS AND MEANS, HOUSE OF REPRESENTATIVES, ANNOUNCES A FIELD HEARING ON THE STATUS OF CONTINUING DISABILITY REVIEWS [CDR]

The Honorable J.J. Pickle (D., Tex.), Chairman of the Subcommittee on Social Security of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will hold a hearing to examine the present status of the social security disability review process. The hearing is to be held in Room 222, in the Statehouse, Boston, Massachusetts, on Friday, February 24, beginning at 10:30 a.m. Members of the Subcommittee, including Chairman Pickle and Congressman James Shannon (D., Mass.) of Lawrence, are expected to attend.

The hearing will focus on three main concerns: first, the effect of present review procedures on disability recipients; second, the pressures that have led many states, including Massachusetts, to implement their own administrative procedures for this program in defiance of federal policy guidelines; and third, the inadequacy of administrative initiatives to resolve this crisis.

The Subcommittee expects to take testimony from invited witnesses including beneficiaries, state officials, and representatives from the Department of Health and Human Services.

In announcing the hearing, Chairman Pickle noted:

"It is critical that the disability program be properly administered since it provides the primary source of income for the majority of over 6 million physicially or mentally disabled Americans.

"During the past three years, over 400,000 beneficiaries have been told they are no longer eligible for benefits. However, this determination has often been made erroneously. Nearly two-thirds of those who appeal these terminations have their benefits restored after enduring a lengthy appeals process, and many of those who have not appealed are nonetheless still unable to return to work. This process of review, benefit disruption, and legal review represents a serious emotional and physical threat to millions of disabled Americans and their families.

"As a result of the CDR procedures used, the whole social security disability program has been plunged into administrative chaos. In twenty states the federal courts have intervened and substituted a court ordered standard of review for that called for by the Social Security Administration. In nine other states the governors have declared a self-imposed moratorium on processing disability reviews. This combination of federally court ordered and state imposed actions has effectively brought to a halt the uniform national system of disability insurance under social security. The Administration is now threatening sanctions against those States that do not comply with Federal standards.

"The human costs of the current crisis," said Mr. Pickle, "are incalculable. The purpose of these hearings is to demonstrate, beyond doubt, the folly of the Administration's reluctance to support the kind of legislative solution my Subcommittee has developed and the Ways and Means Committee has unanimously approved."

WRITTEN COMMENTS IN LIEU OF PERSONAL APPEARANCE

For those who wish to file a written statement for the printed record of the hearing, six copies are required and may be submitted by the close of business Friday, March 9, 1984, to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515.

Chairman PICKLE. The committee will come to order.

This is a hearing of the Ways and Means Subcommittee on Social Security as we make further examinations into the disability programs.

Today we hold our second field hearing on the social security disability program. Last week we held a joint hearing in Dallas, TX, in connection with the Committee on Aging. Senator John Heinz and I together conducted the hearing in Dallas. Testimony there was helpful, and I am hopeful that our testimony here today will also be helpful in this program.

I'm sorry that we have to hold these hearings at all. The problems with the disability program have occupied this committee's time for almost a year. We've put together legislation that's currently contained in the House bill H.R. 4170, the pending tax reform bill. And we believe that the legislation in that particular bill contains provisions that would go a long way toward solving the great difficulties we have in the disability program today.

It's deeply disturbing to me that the administration, after working with us last year to develop a responsible bill, has turned against this cooperative process, and is now saying that no legislation is necessary. In fact, at last week's hearing, the administration not only refused our invitation to testify, but didn't even have a representative present to hear public testimony.

I would like to ask, is anyone here today to represent the Reagan administration in these hearings? If any representative comes in or you hear of anyone in the administration who's concerned about these hearings, we would be pleased to hear testimony from them.

I might say that Secretary Margaret Heckler was on the airplane this morning with me from Washington to Boston, but she was going ahead to New Hampshire to campaign for the Reagan administration in the primary. That's a very serious matter, and I know she's greatly needed up in New Hampshire.

Now, I find this kind of attitude incredible. Anyone who looks at the disability program today knows that the program is in chaos, and that the only way to restore an orderly process is to pass appropriate legislation. I urge the administration to reconsider their refusal to work with Congress on this matter.

The Congress has focused on the disability program several times over the last 6 years to ensure that all those who are fairly entitled to benefits receive them. In 1980, our concerns led us to enact a requirement that SSA reexamine all beneficiaries periodically to make sure they are still eligible for benefits. Now, this is sensible, and it's fair, and it's an obvious administrative process, and the Congress did the right thing in requiring these reviews.

However, we left considerable leeway for the administration to put this requirement into effect, and that's where the problem began. In 1981, this administration, in order to get immediate budget savings, began the continuing disability reviews a year before they were required, and in addition, they greatly accelerated the number of reviews. This too hasty and harsh implementation of a sensible legislative requirement has proven disastrous.

When we passed the bill in 1980, the continuing review provision was estimated to save $168 million in its fifth year in operation, by making some changes in the review process, and gradually clearing up the rolls. But the current administration estimate is that the savings would be $1.6 billion, at least 10 times more than the original estimate.

Now, it's good to have savings, and if you have a savings by having a proper review of the rolls, then the savings are in order and to be welcomed. But when you have a savings 10 times more than what you had estimated, then you must know that you're removing a lot people from the rolls who shouldn't be, and you're doing it too abruptly.

During the past 3 years, over 400,000 beneficiaries have been told they are no longer eligible for benefits. Nearly two-thirds of those who appeal their terminations have had their benefits restored, which is some indication of how many erroneous decisions have been made.

As a result of these CDR procedures used over the past 3 years, the entire disability program has been plunged into administrative chaos. Just listen to the situation we're in today. In 20 States, the Federal courts have substituted a court-ordered standard of review for that called for by the Social Security Administration. In nine other States, the Governors have declared a self-imposed moratorium on processing disability reviews. The administration is now threatening sanctions against those States that do not comply with Federal standards.

The disability bill that our subcommittee developed, based on major contributions by my colleague here, Congressman Jim Shannon, is a responsible solution. I want to point out and emphasize the fact that Congressman Shannon was the original introducer of this bill. He's the coauthor of the bill that is pending now. And, as much as anybody in Congress, he has taken the initiative to advance legislation to help us correct our difficult situation. So, we're indebted to you, Congressman Shannon, for the leadership you're giving this bill.

The bill we have establishes a sound and fair medical improvement standard, uniform national standards of decisions, continuation of benefits through appeal, and earlier face-to-face interviews with claimants at State agencies.

Now we're told by the administration that no legislation is necessary, and that the whole situation can be remedied by internal administrative reforms. I find that hard to believe, but I'm going to investigate it, and that's the purpose of these hearings today. We need to hear whether there are still problems with the program, and whether administrative actions would be enough, and if, indeed, we do need the legislation that's pending.

[The prepared opening statement of the chairman follows:]

OPENING STATEMENT OF HON. J. J. PICKLE, CHAIRMAN OF THE SUBCOMMITTEE ON SOCIAL SECURITY, COMMITTEE ON WAYS AND MEANS

Today, this Subcommittee holds our second field hearing on the social security disability program. Last week we held a hearing jointly with the Senate Committee on Aging, in Dallas, and I hope our testimony today will be as frank and helpful as last week's was.

I am truly sorry that we have to conduct these hearings at all. The problems of the disability program have occupied this committee's time for almost a year now. We have put together legislation, currently contained in H.R. 4170, that will resolve the problems we heard about last week and that I assume we will hear about again today.

It is deeply disturbing to me that the Administration, after working with us last year to develop a responsible bill, has turned against this cooperative process, and is now saying no legislation is necessary. In fact, at last week's hearing, the Administration not only refused our invitation to testify, but didn't even have a representative present to hear the public testimony.

I find this attitude almost incredible. Anyone who looks at the disability program today knows that the program is in chaos, and that the only way to restore an orderly process is to pass our bill. Once again, I urge the Administration to reconsider their refusal to work with the Congress on this matter.

The Congress has focused on the disability program several times over the last six years to ensure that all those who are fairly entitled to benefits receive them. In 1980, our concerns led us to enact a requirement that SSA re-examine all beneficiaries periodically to make sure they are still eligible for benefits. This is a sensible, fair, and almost obvious administrative process, and the Congress did the right thing in requiring SSA to do it.

However, we left considerable leeway for the Administration to put this requirement into effect, and that's where the problems began. In 1981, this Administration, in order to get immediate budget savings, began the continuing disability reviews a year before they were required, and greatly accelerated the numbers of reviews. This too hasty and harsh implementation of a sensible legislative requirement has proven disastrous.

When we passed the bill in 1980, the continuing review provision was estimated to save $168 million in its fifth year of operation. The current Administration estimate is $1.6 billion, almost 10 times the the original estimate! During the past three years, over 400,000 beneficiaries have been told they are no longer eligible for benefits. Nearly two-thirds of those who appealed their termination have had their benefits restored, which is some indication of how many erroneous decisions have been made.

As a result of the CDR procedures used over the past three years, the entire social security disability program has been plunged into administrative chaos. In twenty states, the Federal courts have substituted a court-ordered standard of review for that called for by the Social Security Administration. In nine other states, the governors have declared a self-imposed moratorium on processing disability reviews. The Administration is now threatening sanctions against those States that do not comply with Federal standards.

The disability bill that our Subcommittee developed, based on major contributions by my colleague here today, Cong. Jim Shannon, is a responsible solution. It establishes a sound and fair medical improvement standard, uniform national standards for decisions, continuation of benefits through appeal, and earlier face-to-face interviews with claimants at the state agencies, among other provisions. This legislation seems to us the only way to restore order to the process.

Yet we are told by the Administration that no legislation is necessary, and that the whole situation can be remedied by internal administrative reforms. I find that hard to believe, but I am willing to investigate it, and that's the purpose of this hearing. We need to hear whether there are still problems with the program, and whether administrative action alone can resolve them. If, as I believe, the program is truly in a mess and enactment of our bill is the best route to solve that mess, that message must be sent loud and clear to the Administration.

Chairman PICKLE. I'm going to ask at this point, the Honorable Jack Backman, Senate chairman, who is chairman of the Special Commission on Social Security Disabilities, if he would take a seat here at the witness table. And if the Honorable Joseph DeNucci, House chairman of the Special Commission for Social Security Dis-

ability for the Massachusetts House of Representatives—if you will have a seat, both of you gentlemen.

Now, before we proceed, I want to recognize Congressman Shannon to make such statements as he would care to make at the beginning of this hearing. And then we'll proceed to receive testimony from you two gentlemen. You just keep a seat, and we'll ask Congressman Shannon to make such a statement.

Congressman Shannon.

STATEMENT OF HON. JAMES M. SHANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. SHANNON. Thank you, Mr. Pickle, Senator Backman, Representative DeNucci, and all of you here today. I really want to welcome you all to the hearing this morning.

I want you to know how pleased I am that Chairman Jake Pickle could come to Boston for this hearing. As all of you know, he is chairman of the Subcommittee on Social Security of the Ways and Means Committee, and has been a champion for the elderly and the disabled in that service on the committee.

This is also a continuation of something that has come to be known in Washington as the Boston to Austin axis because over the years there's been a very close relationship between the Massachusetts and Texas congressional delagations. Mr. McCormack was Mr. Rayburn's right-hand man. Mr. Wright is now Mr. O'Neill's right-hand man, and I'm Mr. Pickle's right-hand man on these issues.

I think it's important that he would come here to hear from us as to how the disability bill is affecting the people of Massachusetts.

The Dukakis administration, and the Special Commission on Social Security Disability, and the tremendous grassroots effort throughout the State, all have made an invaluable contribution as we've worked to correct a good program gone awry.

I regret having to say that, as important as the progress has been, much work remains to be done.

I'm certain that everyone in this room is aware that—on two recent occasions—President Reagan has sent witnesses to Capitol Hill to testify in opposition to the disability reforms that were approved on a bipartisan basis by the Ways and Means Committee last fall.

The President thinks he can wish away the human tragedies caused by his disability policies over the past 3 years.

He is wrong.

Already, almost half a million disabled workers have had their lives seriously disrupted by the on-going review process. Some 190,000 disabled workers have been permanently removed from the rolls. Another 160,000 have kept their benefits only after a long appeal. And there are 120,000 cases currently pending.

But reciting these statistics doesn't begin to convey the magnitude of this national disaster.

Human lives have been ruined; and in some cases, lost.

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The confidence and trust that the disabled once had in their Government has been shattered by the failure of the system—time and time again—to accurately assess an individual's ability to work.

The Social Security disability program is failing to achieve its basic goal; to provide economic security to a worker and his or her family should that worker become disabled.

It's understandable that many of the States have responded by refusing to implement the program until changes are made. Other States have been ordered by the courts to change the way they're running the program.

While the response of the States to this crisis has been admirable, and in some cases heroic, it's been clear from the start that this problem would continue until changes in the law were achieved at the Federal level. And we've worked to change the Federal law.

Under Chairman Pickle's leadership, we've moved a major reform package through the Ways and Means Committee where it now waits for floor action. And it is our hope that we will see action on the floor of the House of Representatives within the next 2 weeks.

President Reagan wants to kill this legislation. He says it isn't needed. We'll find out today whether it's needed or not.

The President says this bill costs too much. I ask the President: What about the cost of his policies in terms of lost human dignity and ruined human lives? What about the increased administrative costs because thousands of disabled workers are being wrongly terminated and are left with no choice but to flood the appeals process?

What about the costs to the trust funds because the system is in total chaos, with many States being ordered by the courts to reopen thousands of cases that were processed incorrectly?

The President thinks he can wish these problems away. But the people who've come here this morning are not going to let that happen.

The courts, which now have some 20 States operating under some sort of court order, aren't going to let that happen.

The nine States which are refusing to process terminations in accordance with Federal guidelines aren't going to let that happen.

And let me be clear on this, the Congress is not going to let that happen.

The President can continue to oppose sensible reforms of this program, or he can join with us. Either way, our work will not be done until we restore some fairness, uniformity and stability to this program.

I look forward to the testimony that we'll receive this morning which will focus on the disability program, and in particular on these issues as they affect Massachusetts.

I want to thank Senator Backman and Representative DeNucci for being here today. I want you to know that the leadership that you have provided here in the State House on this issue has been well noticed. And Washington has been tremendously supportive of our efforts, and we look forward to working together with you to make sure that all the people involved in this program are protected.

Thank you, Mr. Pickle.

Chairman PICKLE. Thank you, Mr. Shannon for your statement, and thank you for your welcome to Massachusetts, and for your reminding all of us, again, of the great friendship between Massachusetts and Texas that has been enjoyed from Boston to Austin.

I served under Speaker John McCormack and there never was a greater gentleman that lived than John McCormack. So I have a special feeling of warmth and appreciation just to be here.

Now, we're honored to have Senator Backman and Representative DeNucci here. I'm going to ask, Senator Backman, if you will proceed with your statement. I believe you have a prepared written statement?

Mr. BACKMAN. I do.

Chairman PICKLE. You may proceed. Would you want to make that statement in the record, or do you want to present it?

Mr. BACKMAN. Well, thank you——

Chairman PICKLE. Go ahead with your statement then.

STATEMENT OF JACK H. BACKMAN, SENATE CHAIRMAN, SPECIAL COMMISSION ON SOCIAL SECURITY DISABILITY, COMMONWEALTH OF MASSACHUSETTS

Mr. BACKMAN. On behalf of the President of the Senate and the Massachusetts Special Commission on Social Security, we welcome you to Massachusetts.

Chairman PICKLE. Thank you, sir.

Mr. BACKMAN. We thank you for coming. We know that you've worked as hard in Congress as we have here in Massachusetts to correct the errors of judgment of the Social Security Administration.

Congressman Shannon of your committee has been a leader in protecting the rights of the disabled in our State.

At this moment the several States and their disabled citizens need your help because of dismaying threats by the Social Security Administration and the U.S. Secretary of Health and Human Services.

First, there was a threat that the moratorium will be lifted on termination of benefits to disabled citizens who are in the process of appealing a decision that terminates their disability compensation.

Second, States not conforming to erroneous guidelines of the Social Security Administration, which guidelines have actually been overruled by the courts, are threatened with sanctions. The implied threat is Federal takeover of the State program or loss of State funds.

Third, notice has been given by the administration that it will no longer support the very congressional reforms that not only you, but the Secretary herself, once considered essential. In a misdirected attempt to save a few dollars, the current administration is harassing and penalizing thousands of disabled citizens throughout the Nation.

Let us briefly summarize what our special commission has done in a year and a half. Our commission was created to protect the truly disabled citizens of our State from unfair loss of benefits. And

I do want to say that this matter was first called to our attention by State employees themselves at the risk of their job who said that something wasn't going right in the administration of this program.

In 1980, Congress had mandated that the administration conduct a fair and careful review of social security disability recipients. The administration responded instead with a hatchet. In a brief period, without fair hearings, without trained staffs or adequate records and with changed rules the administration cut thousands of disabled people from the roles.

Our commission found that more than 4,000 persons were cut off in Massachusetts. The gross unfairness of these actions was illustrated when over 70 percent of those who appealed were found entitled to benefits.

However, restoration of benefits, as you well know, could never cure the tragedies of a year without funds, loss of medical attention and sometimes death itself from the very medical condition rejected by the administration.

Because of national findings similar to those of Massachusetts, in great part by your committee, Congress passed a temporary law guaranteeing benefits while appeals were pending. This law has since expired. We therefore need your immediate action once again.

Our Special Commission, working closely with the Governor and the Massachusetts Rehabilitation Commission, which was designated as the Administrator for the disability program in our State, has formulated the termination proceedings in line with Federal court rulings.

Our efforts have been largely successful to the benefit of our disabled citizens. The 40 percent denial rate has been reduced to less than 15 percent. Unfortunately, the Social Security Administration is willing neither to accept our fair determination process, provide payments while appeals are pending or follow the content of court decisions themselves.

Therefore, we respectfully urge that Congres address four issues as soon as possible.

First, as you have stated in your opening address, Mr. Chairman, a clear standard must be adopted requiring a finding based on substantial evidence of medical improvement before a person is terminated from benefits.

Second, we must maintain the policy of continuing benefits while appeals are pending. This policy was once enunciated by the Secretary of Health and Human Services. However, she has evidently now changed her mind.

Third, the right to a face-to-face hearing by a recipient should be guaranteed before any decision is made to terminate benefits. This is in line with ordinary administrative procedure. The Secretary supports a hearing only after a decision to terminate has been made.

Fourth, a moratorium on further terminations must be maintained until these reforms are put in place.

I once again want to thank you Mr. Chairman and Congressman Shannon for coming here to Massachusetts. Your presence here indicates to us that you fully appreciate our concern. We in Massa-

chusetts share your goal and wish to help you turn around this unfortunate administrative failure of the Social Security Administration.

[The prepared statement follows:]

STATEMENT OF SENATOR JACK H. BACKMAN, SENATE CHAIRMAN, SPECIAL COMMISSION ON SOCIAL SECURITY DISABILITY, COMMONWEALTH OF MASSACHUSETTS

On behalf of the President of the Senate and our Massachusetts Special Commission on Social Security, we thank you for holding this hearing in Massachusetts. We know that you have worked as hard in Congress as we have in this state to correct errors of judgment of the Social Security Administration. Congressman Shannon of your Committee has been a leader in protecting the rights of disabled in Massachusetts.

At this moment, several states and their disabled citizens need your help because of dismaying threats and actions by the Social Security Administration Commissioner and the U.S. Secretary of Health and Human Services. The threatened action is threefold:

First, there is a threat that the moratorium will be lifted on termination of benefits to disabled citizens who are in the process of appealing a decision removing them from compensation. A letter to this effect was received by our Governor, despite an earlier public promise by the Secretary to continue the moratorium until Congress had an opportunity to legislate needed reforms to the system.

Second, states not conforming to erroneous guidelines of the Social Security Administration, which have actually been overruled by the Courts, are threatened with sanctions. The implied threat is federal takeover of the state program or loss of funds.

Third, notice has been given that the Administration will now oppose the very Congressional reforms that not only you but the Secretary once considered essential to the just operation of the Social Security Disability program.

We must now recognize that we are witnessing once again a trend of this Administration. In a misdirected attempt to save a few dollars, it is harassing and penalizing thousands of disabled citizens throughout the nation.

Let us briefly summarize our Special Commission's year-and-one-half effort.

Our Commission was created as a decisive act of our legislative leadership, joined by the Governor and supported by our Congressional delegation, to protect the truly disabled citizens of our state from unfair loss of benefits.

In 1980, Congress mandated that the Administration conduct a fair and careful review of Social Security Disability recipients. The Administration responded instead with a hatchet.

In a brief period, without fair hearings, trained staff or adequate records and with changed rules, the Administration cut thousands of disabled people in Massachusetts alone from the rolls.

Our Commission found that as many as 4,000 persons were cut off in Massachusetts. The gross unfairness of these actions was illustrated when over 70% of those who appealed were found entitled to benefits by the Administrative Law Judges. Since many had to wait over a year for their appeals to be heard, restoration of benefits could never cure the tragedies of a year without funds, loss of medical attention and sometimes death itself from the very medical condition rejected by the Administration.

Because of national findings similar to those of Massachusetts, Congress passed a temporary law guaranteeing benefits while appeals were pending. This law has since expired. We, therefore, need your immediate action once again.

Our Special Commission, working closely with the Governor and the Massachusetts Rehabilitation Commission which administers the disability program in our state, has formulated determination procedures in line with federal court rulings. Our efforts have been largely successful to the benefit of our disabled citizens. The 40% denial rate has dropped to a level below 15%.

Unfortunately, the Social Security Administration is willing neither to accept our fair determination process, provide payments while appeals are pending, or follow the content of the court decisions themselves.

Therefore, we respectfully urge that Congress address four issues as soon as possible.

First, a clear standard must be adopted requiring a finding based on substantial evidence of medical improvement before a person is terminated from benefits.

Second, we must continue the policy of continuing benefits while appeals are pending. This policy has been enunciated by the Massachusetts Legislature, the Governor and the Massachusetts Congressional delegation, and by the Secretary of Health and Human Services. She has evidently now changed her policy.

Third, the right to a face-to-face hearing by a recipient should be guaranteed before any decision is made to terminate benefits. The Secretary supports a hearing only after a decision to terminate is made.

Fourth, a moratorium on further terminations must be maintained until these reforms are put into place.

Thank you for coming to Massachusetts. Your presence here indicates to us that you fully appreciate these concerns. We in Massachusetts share the goals of your Committee and wish to help you turn around this unfortunate adminsitrative failure of the Social Security Administration.

Chairman PICKLE. Senator Backman, we thank you. You've given us a very good statement and a strong statement. And I'm glad to have it in the record. I appreciate your presence here this morning.

Would you mind staying at the witness table so we can hear Mr. DeNucci? And then we may want to ask questions of either one of you.

So Mr. DeNucci, if you will now proceed.

STATEMENT OF A. JOSEPH DeNUCCI, HOUSE CHAIRMAN, SPECIAL COMMISSION ON SOCIAL SECURITY DISABILITY, COMMONWEALTH OF MASSACHUSETTS

Mr. DENUCCI. Thank you, Chairman Pickle and Congressman Shannon. I'm confident that you're here this morning to address this crucial issue that is plaguing our Social Security Disability Insurance Program.

For the record, I am the House chairman of the Joint Committee on Human Services and Elderly Affairs in the Massachusetts Legislature. I also serve as cochairman of the Special Commission on Social Security Disability.

I'm pleased to testify before your congressional Subcommittee on Social Security, an important subcommittee of the House Ways and Means Committee in our Congress.

And I'm here to testify on the desperate need for Federal legislation to address the many problems plaguing the Social Security Disability Insurance Program. This matter has reached the crisis point since Secretary of Health and Human Services, Margaret Heckler, has threatened to reverse what we in Massachusetts believed was a genuine Federal administration commitment to work with Congress and the States to ensure fair procedures in continuing disability investigations.

As you on the committee are aware, I refer specifically to Acting Social Security Administration Commissioner Martha McSteen's testimony before the Senate Finance Committee. Her testimony indicated that the Reagan administration, through the SSA, is reneging on a commitment that it had, and now it opposes all reform legislation to reform the SSDI program.

It plans to end the moratorium on cessations of benefits and also that SSA may punish states, including Massachusetts, that refuse to go along with these potentially harmful policy changes.

The head of the Social Security Administration and the Secretary of Health and Human Services seem to be unwilling to advocate on behalf of basic protections for disabled persons. This re-

minds us all of the reasons why the Massachusetts Special Commission on Social Security Disability was appointed in the first place.

Widespread abuse within the program was uncovered by this commission. The testimony our commission heard from disabled persons charging that they were unfairly being denied disability benefits was from very sick people. People often in obvious pain. That testimony was very shocking to commission members, to the press and to members of the public who were attendance.

And if I may cite briefly some of the cases that we heard from.

One was from a legally blind person who had a series of stomach and intestinal operations. Another, an individual who had triple bypass surgery and had been told by his personal physician that a return to work would sharply curtail his lifespan.

Also, a person with cerebral palsy since birth, as well as the seriously impaired function of both arms, was determined employable, although four doctors had attested to complete disability.

A person with a chronic disc disease which has required 12 operations and who suffers from numbness, pain and falling, and walks on crutches was determined able to go back to work.

A 59-year-old stroke victim and diabetic. There were also the sadder instances of people who could not come before us, but whose cases were called to our attention by family, by other legislators, and by advocates. A woman with terminal cancer, two retarded persons with I.Q.'s of 60, one beyond the Social Security Administration's guideline number.

Many chronically mentally ill people with records of extended stays in mental institutions and, in some cases, additional serious physical problems. And a man with both physical and psychological problems who, his wife wrote to me, could not cope with the long and arduous appeals process.

And I quote her:

> By terminating his social security checks, the system threw an unstable individual into such a depression that he resumed his drinking after a sober period of 2 years. It took 8 months to be heard before a Federal judge. He was heard and reinstated. He was admitted to the hospital a week later, on July 1 of 1982. He died on July 15, 1982. He was 43 years old.

I take the time to recall this testimony today, because these are the concrete cases of people the special commission believes were not properly protected under SSA regulations. The very high reversal of decisions at the ALJ level, "between 70 percent to 80 percent," is evidence of problems within these regulations.

And since the SSA and Health and Human Services are not ready to accept responsibilites for extending basic protections to disabled persons, the individual States must take bold, interim steps to assure such protections.

Steps such as Massachusetts has already taken to implement fairer procedures in CDR cases. To impose a moratorium on cessations until benefits on appeals are assured, and to join a lawsuit addressing even broader issues. There can be no permanent, secure solution for vulnerable disabled people, however, without reform legislation at the Federal level.

I therefore strongly support passage at the earliest possible date, of legislation which will clearly mandate the use of the medical im-

provement standard, continue benefits through appeal, and provide for face-to-face interviews before terminations.

Present SSA policy must be repudiated for, intentional or not, it achieves savings, not through greater efficiency, but only because the seriously disabled persons in the SSDI program often lack the stamina and skills to carry through a long and arduous appeals process.

We on the special commission thank you very much for coming to Massachusetts today to hear our testimony. We of course stand ready to assist and work with your subcommittee and our congressional delegation, particularly Congressman Shannon and Congressman Frank, to assure that genuinely disabled persons receive the Federal benefits and protections to which they are entitled.

Thank you very much, and we're ready to answer any questions.

[The prepared statement follows:]

STATEMENT OF A. JOSEPH DENUCCI, HOUSE CHAIRMAN, SPECIAL COMMISSION OF SOCIAL SECURITY DISABILITY, COMMONWEALTH OF MASSACHUSETTS

I am pleased to be here this morning, testifying before the subcommittee of the House Ways and Means Committee, on the desperate need for Federal Legislation to address the many problems plaguing the Social Security Disability Insurance Program. This matter has reached the crisis point since Secretary of Health and Human Services, Margaret Heckler, has threatened to reverse what we in Massachusetts believed was a genuine Federal administration commitment to work with Congress and the States to ensure fair procedures in continuing disability investigations. As you on the committee are aware, I refer specifically to acting Social Security Administration Commissioner Martha McSteen's testimony before the Senate Finance Committee, testimony indicating that the Reagan administration (1) opposes all legislation to reform the SSDI Program, (2) plans to end the moratorium on cessations and (3) may punish States, including Massachusetts, that refuse to go along with these potentially harmful policy change.

The Head of the Social Security Administration and the Secretary of Health and Human Services are unwilling to advocate on behalf of basic protections for disabled persons. This reminds us all of the reasons why the Massachusetts special commission on social security disability, which I cochair, was appointed in the first place. Widespread abuse within the program was uncovered by this commission. The testimony our commission heard from disabled persons charging that they were unfairly being denied disability benefits, was from very sick people, often in obvious pain, and was very shocking to commission members, to the press, and to members of the public who were in attendance. To cite, just briefly, some of those cases, we heard from: (1) a legally blind person who had had a series of stomach and intestinal operations, (2) an individual who had triple bypass surgery and had been told by his personal physician that a return to work would sharply curtail his lifespan, (3) a person with cerebral palsey since birth, as well as seriously impaired function of both arms, was determined employable, though 4 doctors had attested to complete disability, (4) a person with chronic disc disease disease which has required 12 operations and who suffers from numbness, pain and falling, and walks on crutches, (5) a 59-year-old stroke victim and diabetic. And there were also the sadder instances of people who could not come before us, but whose cases were called to our attention by family, by other legislators, and by advocates—a woman with terminal cancer, two retarted persons with IQ's of 60, 1 point beyond the Social Security Administration's guideline number; many chronically mentally ill people with records of extended stays in mental institutions and, in some cases, additional serious physical problems; and a man with both physical and psychological problems who, his wife wrote to me, could not cope with the long and arduous appeals process and I quote her:

"By terminating his Social Security checks, the system threw an unstable individual into such a depression that he resumed his drinking after a sober period of 2 years. It took 8 months to be heard before a Federal judge. He was heard and reinstated. He was admitted to the hospital a week later—July 1, 1982. He died July 15, 1982. He was 43 years old."

I take the time to recall this testimony today, because these are the concrete cases of people the special commission believes were not being properly protected under SSA regulations. The very high reversal of decisions at the ALJ level between 70 to

80 percent is evidence of problems with these regulations. And since the SSA and Health and Human Services are not yet ready to accept responsibility for extending basic protections to disabled persons, the individual States must take bold, interim steps, to assure such protections—steps such as Massachusetts has already taken to implement fairer procedures in CDR cases, to impose a moratorium on cessations until benefits on appeal are assured, and to join a lawsuit addressing even broader issues. There can be no permanent, secure solution for vulnerable disabled people, however, without reform legislation at the Federal level. I therefore strongly support and urge passage at the earliest possible date, of legislation which will clearly mandate use of the medical improvement standards, continue benefits through appeal, and provide for face-to-face interviews before termination. Present SSA policy must be repudiated, for intentional or not, it achieves savings, not through greater efficiency, but only because the seriously disabled persons in the SSDI program often lack the stamina and skills to carry through a long and arduous appeals process. We on the special commission thank you for coming to Massachusetts to hear testimony today. We of course stand ready to assist and work with your subcommittee and our congressional delegation to assure that genuinely disabled persons receive the Federal benefits and protections to which they are entitled.

Chairman PICKLE. Mr. DeNucci, I thank you also for your statement. I think at this point I would like to insert in the record two statements from two Congressmen from the State of Massachusetts, Congressman Conte and Congressman Frank. Congressman Silvio Conte has asked me especially to submit a statement for the record today. And I will ask that it and Congressman Frank's statement be included as part of the record.

While I won't read this statement in its entirety, I think I at this time would like to just read one paragraph from his beginning statement. Congressman Conte says:

The disability program in this Nation is in a state of total confusion. It has been marked by a series of fits and starts, of concepts developed but not implemented, of reviews begun but not completed, of errors made and thousands of people needlessly hurt. It is clear to me that Congress—not the Federal Government's administrative agencies—must bear the burden of restoring equity and fairness to the disability program.

[The prepared statements of Hon. Silvio O. Conte and Hon. Barney Frank follow:]

STATEMENT OF HON. SILVIO O. CONTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

I want to thank Congressman Jake Pickle and Congressman Jim Shannon for holding hearings today on the important issue of Social Security disability reform. Although I understand that you are addressing three specific issues today, I want to focus my remarks on one of those issues: the inadequacies of administrative initiatives to solve the crisis in the disability program.

We do not use the word crisis lightly. The disability program in this nation is in a state of total confusion. It has been marked by a series of fits and starts, of concepts developed but not implemented, of reviews begun but not completed, of errors made and thousands of people needlessly hurt. It is clear to me that Congress—not the federal government's administrative agencies—must bear the burden of restoring equity and fairness to the disability program.

The issue is disability is one of balance: how do we in Congress balance the competing needs of taxpayers—who do not want their money going to people who are not disabled—with the sick in our nation: those who cannot speak for themselves. We took an important first step in December of 1982, by enacting temporary reform legislation containing provisions to:

(1) Slow down disability reviews mandated by the 1980 Bellmon amendment.

(2) Provide a face-to-face hearing at the first appeals level (reconsideration).

(3) Provide benefit payments through to a hearing by an administrative law judge.

The provisions of the temporary reform rules generally expired on October 1, 1983; Congress extended the benefits-pending-appeal rules to December 7. They have since expired.

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After the temporary payments rules expired on December 7, Secretary Heckler announced that the Social Security Administration would not terminate the benefits of a disability recipient undergoing a Continuing Disability Review for the time being. On February 1, however, Secretary Heckler announced that states would be required to begin terminating benefits once again. This means that a beneficiary whose benefits are terminated could receive their last check in April—and have no benefits during an appeal to an Administrative Law Judge, which can take up to six months.

Last year, Secretary Heckler also announced some other reforms in the disability program. She announced that the Administration supported disability benefit payments through to the first face-to-face appeal. The Department of Health and Human Services also broadened the definition of "permanently disabled" which had the effect of reducing the number of disability reviews. These reforms were a good start—but we needed to go further.

Today, it is clear that attempts to administer this program through the executive branch are not working as well as they should. Because of a lack of one clear voice governing disability, several courts have ordered disabled beneficiaries restored to the benefit rolls. Several states—including Massachusetts—have either imposed moratoriums on cessations of disability benefits, or are using their own guidelines. In all, twenty-seven states are not in compliance with the federal regulations. What the program needs is a voice of reason.

That voice of reason came from Congressman Pickle. He and his subcommittee began work on a comprehensive disability reform proposal:

(1) The bill provides, on a permanent basis, benefit payments through to a hearing before an administrative law judge.

(2) The bill imposes a moratorium on reviews of the mentally disabled for a limited period of time.

(3) The reconsideration process would be replaced with a new system to insure an immediate face-to-face interview with an individual whose benefits are about to be terminated.

(4) The Social Security Administration would be required to study all relevant medical evidence before terminating a claimant. As well, the bill provides that a claimant can not be terminated unless his condition has improved to the extent that he is able to engage in substantial gainful activity.

(5) Social Security would be required to apply court decisions across the circuit in which they are handed down.

It is clear that uniform solutions are necessary—similar to those contained in the Pickle legislation. I am hopeful that Congress can enact these proposals quickly; we need permanent reform. All of us agree with the need for compassion in this program. Compassion will be best demonstrated by Congressional action which balances all the issues and responds to all the problems. It is time for us now to work together for our mutual goal. It will not be an easy task, for nothing worth winning is easily gained. But I am convinced that we can respond to the needs of the disabled. What greater task than that? What nobler challenge for which to work?

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 2, 1984.

Hon. J.J. PICKLE,
Chairman, Subcommittee on Social Security, Committee on Ways and Means, Longworth House Office Building, Washington, DC

DEAR JAKE: As a co-sponsor of your disability reform bill, H.R. 3755, which was essentially incorporated into H.R. 4170, I am writing today to urge you to send your bill to the floor separately as soon as possible. I was very upset—as I know you were—with the Administration's announcement last week on disability reform.

Jake, last year when Secretary Heckler announced her administrative reforms in the disability program, you commented that your subcommittee would continue to develop legislation "in a calm and responsive manner." You spoke of compassion needed in "a program such as disability. But compassion is best shown," you said, "by providing a program that is both as stable and humane as we can make it." I agree with those comments. The Administration's recent announcement seeks to make the administration of the disability program more unstable than it is now.

Look at the record. Sixteen states—including my own state of Massachusetts—are not in compliance with the federal disability regulations. Eleven courts have imposed moratoria on the review process. HHS has not terminated the benefits of any disability recipient since December 6. Congress is considering legislation which is

now apparently contrary to what the Administration supports. Yet despite all the contrary signals, some federal policy makers are ignoring the confusion and fear these signals are causing millions of disabled Americans.

It is time now to clarify this issue once and for all. Your legislation is an excellent response to these problems, for it *would* provide "a program that is both as stable and as humane as we can make it." I urge you to ask Chairman Rostenkowski, and urge you, to send your disability reform proposal to the floor as soon as possible. The time to act is now.

With best wishes and warm personal regards, I am

Cordially yours,

SILVIO O. CONTE,
Member of Congress.

STATEMENT OF HON. BARNEY FRANK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Your hearing today is an important part of the excellent work this Subcommittee has been doing to protect the genuinely disabled from the callous and inhumane policies of the Reagan Administration. It is my strong hope that the rest of Congress will act quickly on the good legislation you have drawn up so that those of our fellow citizens who are so seriously ill that they are unable to work will no longer be subject to arbitary mistreatment by a President who asks for tens of billions more for a wasteful military budget, but begrudges the meager amounts to provide for basic life support for the genuinely disabled.

Many of us were shocked when the Reagan Administration announced recently that it would resume the unfair practice of throwing disabled people off the rolls without giving them the benefit of a hearing before an Administrative Law Judge. We know from experience that this means: the victimization of tens of thousands of innocent Americans, whose only crime is that they are too ill in mind or body to hold down a job, and whom, for that crime, will be punished by this Administration.

It is imperative that we act promptly on the legislation you drafted that would require fair treatment for those on the rolls already, as well as for those who have a need to gain admittance to them. And while I will vote for a comprehensive package that includes necessary revenue measures as well as a disability reform bill, we must not allow prompt action on the disability bill to be held up by a dispute over what sort of tax increases are necessary to help reduce the deficit. If a comprehensive bill cannot be brought to the House floor within a brief time, then I hope that the Ways and Means Committee will report out a separate disability bill. I was pleased to hear Chairman Pickle mention this possibility when we discussed disability on the House floor yesterday, and I urge the Committee to act in this manner if it becomes clear that the tax portion of the bill continues to face hurdles.

It is simply unacceptable for a rich nation like our own to add to the suffering of those who are already unfortunately suffering from some disabling illness. A country that spends billions on the MX and on the Payment-in-Kind program for wealthy farmers can afford a little compassion for the disabled. I hope the federal government will follow the lead of Governor Dukakis, Senator Backman and Representative DeNucci here in Massachusetts and honor our obligation to the disabled.

Chairman PICKLE. I should add that yesterday Congressman Barney Frank held a special order on the floor of the House of Representatives, and I stayed over last evening to participate with him in that special presentation.

Congressman Frank has taken a strong leadership in trying to help us pass this. So we appreciate the support of these two gentlemen on a bipartisan basis. And it's very important that we proceed on that basis.

Senator Backman and Mr. DeNucci, I noticed that you have given us some good strong statements, and that both of you are making, basically, these recommendations, as I gather from your testimony, that you want to have medical improvement—requiring substantial evidence of medical improvement—before a person is terminated.

You'd like to see the benefits continue until the ALJ level, and you want to have face-to-face hearings at an early date—at the beginning—at some proper place so that the beneficiary, or the claimant, can have a chance to have eyeball testimony presented, face-to-face.

And you want a moratorium, in the meantime, until we get some legislation passed. Now, that seems to be, basically, what both of you are asking. Is that a fair appraisal of what you have presented to us?

Mr. BACKMAN. That's correct. Anything less would not protect the disabled people who are being harassed at the present time.

Chairman PICKLE. Mr. DeNucci, do you agree with that statement, generally?

Mr. DENUCCI. Mr. Chairman, we have discovered that the CDR process is a paper process. It has no contact with the individual. An individual on benefits would receive a letter in the mail indicating that their benefits would be terminated within 60 days.

A person had to appeal. Some of them couldn't. During that appeal process, we've found that some of the medical consultants that the administration uses, or mandates to use, have no relevance in expertise to the particular medical problems that the individuals are dealing with.

For example, a heart patient would be referred at times to an orthopedic person; that doesn't make sense. The system doesn't make sense. At one point, our Massachusetts Rehabilitation Commission, the agency that handles our disability program here in Massachusetts, was directed by the Federal Administration to do a review or terminate 400 cases per week. Impossible, makes no sense, irresponsible.

I think that direction has to be given from the Congress to the administration. And putting vulnerable people in stress situations unnecessarily is inhumane.

Chairman PICKLE. I would point out to you that the pending bill, the Pickle/Shannon bill joined in by Mr. Anthony of Arkansas, essentially covers these four points that you're asking for. We think that's the appropriate approach to take, and we're going to ask for that.

I want to say this, Mr. DeNucci, that I noticed you headed a commission here in Boston for your legislature; did you hold hearings about these kind of disability terminations?

Mr. DENUCCI. Well, Senator Backman and I both cochair the Joint Legislative Committee on Human Services and Elderly Affairs, a committee of the legislature.

Sometime in 1981 our offices began being flooded with calls from constituents claiming that they were unfairly being denied social security benefits, that they got these abrupt cancellations of benefits via mail. Senator Backman and I filed legislation to establish this special commission to investigate the social security disability program here in Massachusetts.

And I have to say that Senator Backman first came up with the idea of establishing the commission. And I have to say, unlike other commissions, we have had an effect with the help of the media, with the help of the advocacy community—they've been

great supplying us with the evidence and the day-to-day suffering that people go through during this process—helped us very much.

And with the cooperation of Congressman Shannon and Congressman Frank and the entire Massachusetts delegation, we have begun to address this issue, as you're doing today, on a Federal level.

I feel that it was our special commission that really brought to the forefront publicly the problems that we're creating for disabled people. I have to say that both Governor King and now Governor Dukakis fully supported our efforts. They have been great in directing policy to our Massachusetts Rehabilitation Commission and we are just hopeful that something will be done at a federal level.

I know what you are up against. I'm not too concerned about the House, but I'm wondering what will happen to the Senate and what kind of action the President will take, if in fact that legislation gets to his desk.

Chairman PICKLE. Let me comment just briefly on that. We have legislation that passed our subcommittee in the House. It has passed the Ways and Means full committee without any objection voiced. We have worked in confidence with the administration to coordinate each aspect.

We thought we had the full assurance of the administration, and we did have up until 30 days ago, when up jumped the devil. The OMB submitted testimony saying that they couldn't support this kind of legislation. Now, I find that hard to understand.

So, I just want to say to you, we're going to pass this legislation out of the House of Representatives. We're going to pass it over to the Senate we think in a very short time, either as a part of the tax package, or separately. Then we'll let the other body take up this responsibility. If the Senate passes it we'll submit it to the President and I don't see how he can do anything except sign it.

They contended that the cost was too high. That is erroneous. They said the cost might cost as much as $3.5 billion if we just apply the medical improvement standard prospectively in administration, and as much as $6 billion if we apply it retroactively. Now, if you say the bill costs $6 billion on a retroactive basis, you are just creating a strawman. We don't intend for this to be retroactive. We've agreed to that, we put it in the legislation, we've written it out in the statute.

So, to say that the standard might be applied retroactively just might scare people when there is no validity to it. The Congressional Budget Office said that the cost would be $1.4 to $1.7 billion for 5 years and that includes disability, that includes medicare and SSI and the administrative costs.

Now, those figures have been run through the computer three or four times. They can't be challenged, not by honest people. So, when they talk about this excessive cost there is not a validity to it. I just hope in this administration they stop being mean to people, and that somehow we can melt their cold, cold heart, I'm confident we can.

Mr. Shannon would you like to comment?

Mr. SHANNON. First of all let me just say that I think it's wholly appropriate and commmendable that the State legislature got involved with this issue because of the unique nature of this Federal/

State program. You were able to be very helpful providing information to us as to what the problems were and how we could best address them.

Perhaps I could ask both of you, does the bill that Mr. Pickle and I have worked on deal with the major problems that you have investigated and discovered in the disability program in Massachusetts?

Mr. BACKMAN. I believe from all that I have seen of your bill, it answers the questions. I am hopeful that not only you get it through the House but that you push it through the Senate. Here in Massachusetts we have a unique situation which may not be completely understood by the chairman from Texas.

Here in Massachusetts house and senate act in joint committees so that representative DeNucci and I happen to serve as cochairmen of the committee on the human services as well as cochairmen of this special commission, which makes things a lot easier.

Chairman PICKLE. At times that might just be easier, other times I don't know.

Mr. SHANNON. That's what Mr. Pickle and I are going to try and do with the Social Security Subcommittee next year.

Mr. DENUCCI. Now, if I can, Mr. Chairman, just emphasize one particular point that at least should be done. The continuation of benefits through the appeals process is crucial. We don't sentence alleged criminals to prison until they have been heard through the appeal, so why should we treat a group of vulnerable people any differently?

Mr. SHANNON. Representative DeNucci, if I could just interrupt you.

One of the things that I think you should be aware of, I know you are aware of, is on the closing day of the last session of the Congress, November 18, Mr. Pickle and I attempted as the last order of business in the Congress to bring before the House of Representatives a bill that would have extended payment of benefits through the appeals process. It was objected to by a Member of the other party on the floor of the House of Representatives.

It had to be brought up on a unanimous consent procedure. But it is our hope that before anybody loses their benefits while still in the appeals process, we are going to be able to get legislation enacted into law and make sure that that aspect of it, in particular, gets taken care of.

The other thing is a point Mr. Pickle made that I think bears repeating. We have, with Mr. Pickle's leadership, every step of the way extended our hand to the administration and said, "Let's work together on this problem. Let's try to solve this problem together."

We don't view this as a partisan issue.

We thought we had a commitment from the administration that they would continue benefits through the appeals process. Well, it's only fair. And then things change, and I want to know why.

Chairman PICKLE. Secretary Heckler told me this morning that she thought they had made some major administrative changes last year, which they did. She thought that this would handle the situation. I reminded her and I say to you, that that speaks for itself as an inaccurate statement. We have 29 States now that removed themselves from the program.

To say that we are handling it administratively is just not factual, so we must take legislative action, and I will tell you we are going to do that.

Mr. SHANNON. Representative, if I can.

I remember when I testified before your hearing on this issue a couple of months ago, we talked about this issue, and I am convinced that in an effort to play politics with this issue, to embarrass Governor Dukakis and some of the other governors, to embarrass those in the State legislature who were involved in trying to deal with this problem and to embarrass some of those of us in the Congress who are dealing with this problem, the administration misrepresented its position.

They never declared a moratorium; all they said was that they were temporarily going to stop sending notices. They still processed the cases and held up the notices for a matter of weeks, to try to convince people that there was no problem. And now they have decided that they are going to start sending those notices out. We will get the legislation through to take care of that.

Chairman PICKLE. Well, I want to thank you gentlemen very much, you have given us good strong statements.

Before I proceed with the next panel, I want to ask again is anyone from the Reagan administration here this morning attending the hearing? We had extended them an invitation. We had asked them to come and testify. As I said earlier, Margaret Heckler has gone to New Hampshire to campaign for the very difficult primary election that they face up there. But if anybody from the administration is here, again I will invite you to appear and present any statements you would care to.

All right. Is Mr. John Mudd here yet? The agenda would call for him just a few minutes later. Is he here now?

Would you care to present your statement now, or would you have time for us to have two panelists before you? All right. Let's do that. We will do that. I am going to catch a plane a little later and I am trying to hear as much testimony as I can before that, if you'll just remain patient, Mr. Mudd, we'll be right with you.

I'm going to ask Mr. Albert Locke from Walton, MA, and Mr. Edward Benoit, B-e-n-o-i-t, Maynard, MA, if you will come forward and take your position at the table.

Now, Mr. Locke and Mr. Stevens, we're glad to have you here, and I'm going to ask you to make just a summary statement of your concerns or your situation so that we might be able to perhaps ask questions.

STATEMENT OF ALBERT LOCKE, WALTHAM, MA

Mr. LOCKE. OK.

I want to announce the Reagan administration does not recognize us. That is why they are not here. They are putting us out of their minds. OK?

Chairman PICKLE. All right.

Mr. LOCKE. Like everything else, OK? I will make it brief.

I was disabled June 6, 1972; taken out of work bleeding. I was in the hospital for a long while, many times for a lot of operations. I was cut off of SSDI November 1981. In November 1982 I got rein-

stated; in fact, I was without money for exactly 11 months. I had to give up my home. My wife has been in the hospital, and everything else.

Chairman PICKLE. What kind of work were you doing?

Mr. LOCKE. I was a group leader, I set up very fine machines at J.L. Thompson Manufacturing Co. My left eye is gone. I have never put in for that, it's got nothing to do with it. The SSDA examining doctors found out I would be going blind eventually. The statement I got from SSA ignored all the doctors' reports. That's nothing; I have copies of everything here.

In fact, I was cut off when I was in the hospital in intensive care. SSA said I was able to perform substantial gainful work. I have all kinds of notices from my doctors, all kinds of doctors, surgeons, and everything else saying that I was completely disabled. I feel lousy today. I came in anyway.

I got all kinds of reports. I sent them in papers and papers and papers and papers. The SSA doctors had seen them. And they kept saying that we don't have enough medical information on you. Please send more of it. I kept getting that all the time, right? I've been in the hospital all together 2 years, roughly 2, since 1972.

I got reinstated through an administrative law judge on September 16, 1982. In fact, the law judge said, this is crazy. After I got awarded that decision—September 1982, I never got any pay until after—well, after November 3, after they said I should get paid.

Social Security said there's nothing wrong. Now, if I was faking, then why would I have more surgery and hospitalization after being reinstated?

I have many more papers I have thrown out. I could fill this folder so thick, I have thrown out a lot of stuff. The doctors, I've seen their reports, you know, saying that you should never be terminated. They—SSA—have sent me to a psychiatrist. I have everything here.

That's all I want to say. They just did not care. They are wrong. My wife has been in the hospital. I've lost my home, everything. And I know, another thing I want to say before I end up. This face to face is the most horrible thing in the world. I look great at times. If you're going face to face in the Social Security office, you're going to see a clerk. They see you walking and they say you're great, right? They don't know what you feel. I guess I've had—well, up in the 19 or 20's, 20 operations, OK?

Chairman PICKLE. How many?

Mr. LOCKE. I've had over 20 operations, well over, OK? I've been in the University and Waltham Hospitals, and I go to the doctors all the time.

Chairman PICKLE. Well, we thank you, Mr. Locke. And please keep your seat if you will because we may want to ask you some more questions.

Now, Mr.——

Mr. BENOIT. Edward Benoit.

Chairman PICKLE [continuing]. Mr. Benoit from Maynard, MA; all right, Mr. Benoit.

Mr. BENOIT. I just want to summarize what I came here to say because I know you're——

Chairman PICKLE. I see we have a statement here; and your entire statement will be made a part of the record.

Mr. BENOIT. OK.

Chairman PICKLE. You may proceed.

STATEMENT OF EDWARD BENOIT, MAYNARD, MA

Mr. BENOIT. OK.

I was born with neural muscular atrophy. That's a muscle disease that deteriorates and as time goes on you get worse. When my father died as a teenager, my mother applied for Social Security survivor's benefits; and while she was at it, she was advised to apply for long-term disability benefits because of my muscular dystrophy. The proper paperwork was given to Social Security and they determined that, yes, I was totally disabled.

Now, I was raised by parents that always drove into your brain, you don't say you cannot do something until you actually go out and try.

So, after getting out of college—that's what I said I was going to do. I went out and had to fight like hell to get jobs, but I got some. Against the wishes of my family, friends, and doctors. But after 5 years, the body just gave out. It could not handle the strain of being just Joe Average. So, I applied for Social Security disability benefits again.

Now, being that my condition was a hell of a lot worse than when I first got disability, and they sent me a letter stating that I had 10 days to furnish them with all the information they needed. Well, that was 10 days their time, figuring it took at least 2 days for that letter to get to my house, now we're down to 8. I had to take another couple of days for me to get it to my doctor; that's 4. So, how in the hell is this stuff going to get done in 10 days? So, I was dropped, and being a big mouth, I called a lot of people and said a lot of things, and finally one gentleman, who I promised will remain nameless, gave me Damien Ivanoff's telephone number.

So, I called Damien, and he told me what was happening. And it sounded like Ronald Reagan's style of politics. So, he introduced me to some attorneys who were up on Social Security law. And I went to see one of them, and when he got done giggling, he could understand why I had been denied these benefits. It was obvious that I should have been accepted for them. So, Damien Ivanoff made some phone calls and the day before I was due to testify before another group, Damien got a call telling him, "Oh, yeah, there was a mistake made on Ed Benoit's case. He's been accepted; no problem."

Well, to that, what I do want to do today is read you my closing statement because it is from my heart. In closing, gentlemen, myself and a lot of disabled persons have been viciously and needlessly hurt and harassed. There is a need to review all cases. But by the rules, as they stand, not as anybody coming new into the system, and with their creative accounting tactics, or by any Renquist who's new to Capitol Hill. If you would like to know what Renquist means, read up on your Gore Vidal. Because I for one will not tolerate this ill mannered behavior of your associates. You

shall treat me with the respect and dignity afforded to us by the Constitution. Thank you, sir, and good day.

[The prepared statement follows:]

STATEMENT OF EDWARD BENOIT, MAYNARD, MA

My name is Ed Benoit. I was born July 26, 1956. Three months later I was diagnosed as having muscular dystrophy. When my father died I applied for social security disability insurance (SSDI). There was no problem. All that was required was a letter about my medical condition from my doctor. This entitled me to receive a lifetime of disability payments with periodic checks on my condition.

After college, I went against the better judgement of family, friends and doctors and attempted to be an average Joe and be self supporting. For five years, I relentlessly pushed my body beyond its endurance. I needed major surgery, which was successful but left me in the position of having to face up to facts. Those facts being that I didn't have what it took to go to work; that is, the strength and stamina that every corporate officer looks for in an employee. So, with my tail between my legs, I went to apply for SSDI. Now I was a lot worse then when I had originally applied as teenager. I was quite angry at being turned down and having things taken out of context. Especially since when I was given only ten days after being notified by SSDI to supply them with what they wanted from the doctors and then calling the person who was responsible for my case and telling him that I needed more time and he told me not to worry that he had enough information to make a decision. When this decision came, it said that I did not qualify because I was capable of crawling and that I could lift up to twenty pounds (amongst other things). All this information was based on what I could do in the past while I was working. None of this considered the effects of the surgery and the past six months out of work.

Naturally, when I read their decision and their reasons for it, I knew right off the bat that I had been railroaded. After making several calls to SSDI and getting transfered from one person to another and being told that if I was not satisfied I did have the right to have my case redetermined. But I would personally have to go to the social security office and request it. Having a background in Human Services and a practical knowledge of what was right and what was wrong, I decided I needed a little help. I got in touch with a group called SAD (Stop Abuse of the Disabled). I was able to get in touch with an attorney who is quite up to date on the legalities concerning social security. I had a talk with him. He had a good chuckle for himself and took my case.

At the prodding of Damien Ivanoff, the director of DDS stepped in the middle of my redetermination and looked at my case. He decided that a mistake had been made. He informed Damien Ivanoff that I had been reinstated to the rolls. This was the night before I was supposed to testify before a public hearing concerning the problems of the disabled. Personally gentlemen, I do not believe in coincidences. This was several months ago. I am now reiterating what I said then.

In closing, gentlemen, myself and a lot of disabled persons have been viciously and needlessly hurt and harassed. There is a need to review all cases. But by the rules, as they stand, not by some Renquist who's new to Capitol Hill and wants to make brownie points for himself. Because I for one will not tolerate this ill mannered behavior of your associates. You shall treat me and my friends with the respect and dignity afforded to us by the constitution.

Thank you and good day.

Chairman PICKLE. Well, I thank you and I thank both of you—there will be no demonstration. I want to thank both of you gentlemen for testifying and let me ask first if Mr. Shannon would like to ask any questions or make any comments.

Mr. SHANNON. Both of you are now presently receiving benefits.

Mr. LOCKE. Correct.

Mr. SHANNON. Mr. Locke, how did you get back your benefits? Did you have a lawyer representing you?

Mr. LOCKE. Yes, I did——

Mr. SHANNON. Now, how did you find a lawyer?

Mr. LOCKE. My own lawyer.

Mr. SHANNON. You went out and hired a lawyer to represent you?

Mr. LOCKE. You know what I had to pay him? The lawyer took out of my pay 25 percent.

Mr. SHANNON. Mr. Benoit, you went and got a lawyer and spoke to Damien Ivanof. He was able to help you.

Mr. LOCKE. But I also hired this attorney under retainer and it was worth every 25 percent it cost me.

Mr. SHANNON. The thing that we found in our testimony from the administration in Washington back in the days when the administration was willing to come and talk to us about this problem was that the savings that they hoped to get out of this program only come because some of the people who are denied their benefits are too disabled to go out and get a lawyer and press their appeal.

Mr. BENOIT. Mr. Shannon, the only reason I was capable of dealing with what happened to me was because I have a degree in human services. I was very active in college politics and semi-State college politics. So, I know that when you're getting railroaded and there's more people against you than you can fight, you go and get somebody who's bigger than they are and can fight just as dirty.

Mr. SHANNON. Both of you gentlemen are intelligent, articulate, and are able to do that. But there are hundreds of thousands of disabled people out there who are unable to appeal. There are people with mental impairments who have lost their benefits, for instance.

Mr. BENOIT. Mr. Shannon, the last time I testified, a week later a very strange letter wound up in my post office box. It was just addressed to Edward Benoit in someplace in Maynard, MA. I turned the letter over to Damien. This guy was at the end of his rope.

Chairman PICKLE. Well, I thank both of you gentlemen—we are sorry to hear this testimony. We are embarrassed about it; but we pledge to you that we're going to do something about it. So, thank you both for coming.

Now, I'm going to ask Mr. John Mudd, the acting secretary for the executive office, office of the human services, the Commonwealth of Massachusetts, to have a seat.

Mr. Mudd, we're particularly pleased to have you. I presume you're here representing the Governor of the State of Massachusetts. So, if you would like, we'd certainly be pleased for you to proceed.

STATEMENT OF JOHN MUDD, ACTING SECRETARY, EXECUTIVE OFFICE OF HUMAN SERVICES, THE COMMONWEALTH OF MASSACHUSETTS

Mr. MUDD. Thank you very much, Mr. Chairman. I thank also, Representative Shannon. Thank you all for coming to the Commonwealth. Thank you for inviting me to testify. I am here on behalf of the Governor. He is extremely sorry that he could not appear personally before you today, but, as you know, he is on his way to Washington for meetings with the Democratic and the National Governors' Association.

Mr. SHANNON. Mr. Secretary, before you begin, let me just say that your complete statement will be part of the record here. You can summarize if you like, whatever is your pleasure—

Mr. MUDD. Exactly. I will try and summarize it because I know you have some time pressures yourself. I'd like to concentrate my

comments here on the issues of Federal/State relations that have led to some of the current chaos in the system.

When Governor Dukakis came to office last January, over 7,500 recipients had been terminated from benefits as a result of the accelerated review procedures——

Chairman PICKLE. What was that figure again?

Mr. MUDD. 7,500 Massachusetts recipients had been terminated since March 1981. So, this is a critical issue for the State administration, a critical issue to ensure some equity and fairness in achieving justice for some of our most vulnerable citizens. We tried to work and did work cooperatively with our local regional office in trying to develop new instructions that would follow a Federal circuit court decision, so-called *Miranda* decision, to develop new standards, medical improvement standards, for processing the CDR's. We worked cooperatively with members of the advocacy community here and the special legislative commission. And, in fact, we developed new standards, and these have had a major impact on our citizens. We've seen the denial rate for CDR cases decline from 32 percent to 13 percent. This is important because many of the *Miranda* procedures are incorporated in your proposed legislation. And that leads us to believe that it would have a tremendous and beneficial impact on our citizens and the citizens in other States of the Nation.

As you've heard today, there is another critical issue, and that is that the Federal Government has not continued to approve payments during the appeal process as citizens are forced to go through that appeals process to the administrative law judge. We, and the Governor, ordered our Massachusetts Rehabilitation Commission, the administering agency here, to stop processing terminations, effective December 7, until Congress could actively restore the benefits pending appeal.

Chairman PICKLE. When was that order issued?

Mr. MUDD. That was issued on December 7. It was consistent with the instructions, although it was done, in fact, prior to our receiving those instructions; but it was consistent with the instructions of Secretary Heckler. We then, as you know, have received subsequent instructions from Secretary Heckler to begin discussions with our regional office to start processing terminations.

Another critical issue has been raised here.

Mr. SHANNON. Mr. Secretary, if I could just interrupt at this point, as I understand it the States stopped processing terminations.

Mr. MUDD. That's correct.

Mr. SHANNON. But the Secretary's instruction was not to stop processing terminations but to stop sending notices——

Mr. MUDD. That's correct.

Mr. SHANNON [continuing]. Which is a critical difference. As I understand it, they never really did declare a moratorium on processing cases, they just said hold the notices until we give you further instructions.

Mr. MUDD. The critical issue for us, Representative, was that, as you pointed out earlier, the Secretary's instructions were viewed as permanent by some, and, in fact, they were temporary. They did not provide a guarantee to continue payments pending review until

Congress acts. And that's what we think is critical; we think it's critical that we observe the rights of those disabled citizens until you have the opportunity to get a national solution to what is a national problem.

We have discovered that Secretary Heckler has issued, in fact, four separate kinds of letters. There are four categories of States. They talk about the need for a national program, but, in fact, they've divided the States into four different categories. Some—like Massachusetts—are called self-imposed nonprocessing States. Others have court-imposed standards. Other States are categorized as States having pending litigation. And others are straight processing States.

Now, we believe that in States where they say there's pending litigation, they are told to stop—well, to continue not processing terminations. There is a court case in this State that has been filed on behalf of several disabled citizens. It has been filed by Greater Boston Legal Services, litigation which would try and ensure that the so-called Miranda medical improvement standard is approved for this State. There is pending litigation here; it's entitled "*Avery, et al.*, v. *Heckler*." We believe we should be categorized as a pending litigation State so that we do not have to process these terminations.

Other States in this category also believe this. I have a copy here of a letter from Governor Thompson of Illinois who also has requested to be categorized as a pending litigation State. We believe, in fact, it demonstrates that this is not a partisan issue. It is an issue of justice and fairness to disabled citizens throughout the country.

We concur with the Secretary; we concur with you that we need a national solution. But that national solution is only going to come through congressional action. Until we have that congressional action, it puts the States and the Governors in a terribly difficult situation. We want a fair and equitable national program.

We are turning to you and support your legislation as a means for ensuring that. It—your legislation—I don't need to reiterate the criteria, you know them; we have supported it; we supported the position of the National Governors' Association; and we believe that your legislation fairly reflects the needs and the principles that the National Governors' Association and our State administration have been fighting for. And, we are prepared to do anything we can to help you get that not only through the House, but everybody is concerned about getting it through the Senate.

[The prepared statement follows:]

STATEMENT OF JOHN MUDD, ACTING SECRETARY, EXECUTIVE OFFICE OF HUMAN SERVICES, COMMONWEALTH OF MASSACHUSETTS

Chairman Pickle, members of the subcommittee, thank you for inviting me to testify before you today on the subject of Social Security disability determinations. Governor Dukakis was very sorry that he could not appear before you personally, but he is on his way to Washington, DC, for meetings of the Democratic and National Governors Association. On behalf of the Governor, However, I want to thank Chairman Pickle, Congressman Jim Shannon and the subcommittee membership for their leadership and their tenacity on this issue and on the excellent SSDI reform legislation reported out of the House Ways and Means Committee.

I understand the subcommittee is interested in a number of areas, including the effect of CDR procedures in different States on beneficiaries, the pressures that led

Massachusetts to follow case law and develop our own CDR procedures, and the administrative initiatives by SSA to deal with this problem.

Commissioner Bartels, who will follow me before this subcommittee today will be presenting information on our *Miranda* review procedures and their effect on beneficiaries, while I would like to concentrate on the issues of Federal-State relations that led to the current chaos in the SSDI system.

Let me tell you, however, that when Governor Dukakis came into office last January, over 7,500 Massachusetts recipients had been terminated from benefits as a result of the periodic review process since the accelerated startup date of March, 1981, by the Reagan administration. This led this administration to take steps to ensure that Massachusetts SSDI beneficiaries were treated fairly. We worked collaboratively with SSA regional office officials to clarify the impact and interpretation of the first Circuit Court's decision in *Miranda* v. *HEW* on case processing. This series of discussions resulted in publication of an SSA program circular on *Miranda*. In conjunction with this circular, we developed and distributed to agency personnel an informational bulletin which described the "*Miranda* procedure" to be followed by our State agency.

We have also worked cooperatively with advocates and the special legislative commission, chaired by Senator Backman and representative De Nucci, and have seen dramatic progress made. As Commissioner Bartels will outline further, we have seen the denial rate for CDR cases cut by over 50 percent, from 32 to 13 percent with the implementation of the *Miranda* procedure and have also seen the use of consultative examinations decline steadily for the past several months. Our experience leads us to believe that the legislation passed by your committee, which uses procedures similar to *Miranda*, would vastly improve the disability determination process.

However, despite our progress and the prospects of national reform, the Congress adjourned in November without acting and without extending the provision to provide terminated SSDI recipients with benefits pending appeal through an ALJ. The Governor, Commissioner Bartels and Secretary Carballo all agreed that terminated beneficiaries should be entitled to the full administrative appeals process before benefits are cut off, especially in a program that has seen the chaos and controversy that existed in the SSDI Program at the time, including different State processing procedures and an alarming rate of overturned cessations—as much as 65 percent—at the ALJ level.

The Governor therefore directed MRC to cease processing title II termination notices effective December 7, 1983, until Congress acted to restore benefits pending appeal through the ALJ level. This decision was consistent with Secretary Heckler's own December instructions to States to hold CDR terminations. Our only concern at that time was the lack of commitment to keep that moratorium in place until Congress acted on a reform package.

Unfortunately, in testimony before the Senate Finance Committee in January, Acting Social Security Commissioner Martha McSteen announced the the Secretary's "hold" on termination would be lifted in February. She also indicated that the administration had decided to oppose the provision of the disability reform package.

The manner in which the Secretary actually lifted her own hold on terminations, however, raised a new set of issues in this growing Federal-State conflict.

We soon learned that the Secretary's letter to Governor Dukakis was one of four letters, each with different instructions, being sent to four different groups of States. Our information is that the four categories were:

(1) The "self-imposed nonprocessing" States, including Massachusetts which were instructed to resume processing terminations (I should note that we have been processing CDR approvals all along);

(2) The "court-imposed standard" states where CDR determinations are going to be made by court ordered standards;

(3) "Pending litigation" states who were instructed to "continue to hold all medical cessations pending further consideration of the litigation issues". I will submit a prototype of this letter, addressed to Governor DuPont, to the subcommittee; and

(4) Processing states, where the Secretary asked them to return to pre-December 7th procedures.

The Governor, Commissioner Bartels and I were all concerned that while the letters from the Secretary referred to the needs for uniform and equitable treatment of disability claimants and beneficiaries nationwide, the differing treatment of beneficiaries would continue even if the States were each to comply with the Secretary's instructions.

At the same time, we were very concerned that Massachusetts was not included in the pending litigation category due to the Commonwealth's involvement in litigation brought by several disabled citizens represented by Greater Boston Legal Services seeking confirmation of the medical improvement standards required by the *Miranda* decision. This litigation, entitled *Avery, et. al.* v. *Heckler* is currently pending in the U.S. district court in Massachusetts.

We have therefore written to both Regional Commissioner Robert Green and Secretary Heckler to request that Massachusetts be recategorized as a pending litigation State and I would be happy to submit these letters to the subcommittee for the hearing record.

I should add that the Governor's letter to Secretary Heckler also raises the uniformity issue and the administration's new opposition to the disability reform package which was approved by your committee. This change in position by SSA, when SSA had previously referred to the expectation of reform in this system, is troubling to us. The Governor and the NGA feel that a national solution is necessary and far preferable to the individual actions that Governors have been forced to take over the past year. These actions have been taken only as a last resort to protect our disabled citizens.

The principles supported by governors in the policy statement that passed at last summer's National Governors Association meeting are essential elements of a reform package and we will continue to work for legislation containing these features: continuation of SSDI benefits through the ALJ level; adherence to a medical improvement standard before terminating benefits once eligibility is initially established; public promulgation of policies and regulations affecting the determination of disability; requirement that SSA apply decisions of the circuit courts of appeal or appeal those decisions with which it disagrees; provisions for face-to-face evidentiary interviews at the initial decision level; and provisions for a temporary moratorium on mental impairment reviews until such time as the listings for mental impairment have been revised.

These provisions are contained in the legislation reported out of your committee and we will continue to work for quick action on that bill to ensure that a fair, equitable, humane, and national program is restored.

[Pending Litigation]

SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC.

Hon. PIERRE S. DU PONT IV,
Governor of Delaware,
Dover, DE.

DEAR GOVERNOR DU PONT: I would like to thank you and your State disability agency for your efforts in processing disability cases under the social security and supplemental security income programs. The importance of these programs is clear when one realizes that each year $17,588,000,000 in benefits are paid out nationally with $50,000,000 going to beneficiaries in your State. Delaware plays a key role in this program by making disability determinations, employing 37 people with an annual budget of $1,895,901.

As you may know, a few States have instituted self-imposed moratoriums on the processing of continuing disability cases. I have written to these States notifying them that they are to resume full-processing beginning in February.

There are several key points that I emphasized in that letter which I want to restate for you personally. We value our association with the States because, over time, it has been an excellent example of a positive Federal-State relationship. As in any relationship, each party has roles and responsibilities. The Federal Government's main responsibility is to set policy that provides for uniform and equitable treatment of disability claimants and beneficiaries nationwide. The State's responsibility is to carry out that policy for its citizens. (In the Federal Judicial Circuit of which your State is a part, there is pending medical improvement litigation that may have a bearing on the standard to be used in deciding whether disability continues.)

In December the Social Security Administration advised all States to temporarily hold notices to persons whose disability had been determined to have ceased. This was done because the authority to continue payment to those persons pending appeal of their decision expired on December 7 and Congress was considering an extension of that authority. Also, the face-to-face reconsideration process was scheduled to begin on January 1, and we wanted to be assured of a fair and consistent notice of this opportunity for all beneficiaries. Now that we have reached agreement on our plans for the face-to-face reconsideration hearing, I believe we can resume

our full-processing of this program, being confident of fair and humane treatment for our citizens. In addition, I reiterate my support for legislative proposals calling for continued payment through the face-to-face procedure and will continue to strongly support this action.

The Social Security Administration will provide most States with instructions to resume processing and notification of disability cessations beginning in February with the added dimension of the face-to-face reconsideration process. However, because of the pending litigation referred to above, the Social Security Administration will be instructing your State to continue to hold all medical cessations pending further consideration of the litigation issues.

We stand ready to continue to work with you in the equitable and compassionate administration of the disability program.

Sincerely,

MARGARET M. HECKLER, *Secretary.*

COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE OFFICE OF HUMAN SERVICES,
Boston MA, February 7, 1984.

Mr. ROBERT C. GREEN,
Commissioner, Social Security Administration, Region 1, John F. Kennedy Federal Building, Government Center, Boston, MA.

DEAR COMMISSIONER GREEN: I am responding to the letter from the Secretary of Health and Human Services instructing the Commonwealth to resume processing disability cessations in Title II and concurrent cases and the related telex messages which exempt certain states from this requirement due to pending litigation issues.

As you know, Governor Dukakis, the Executive Office of Human Services and the Massachusetts Rehabilitation Commission are committed to a disability determination process that treats the disabled citizens of Massachusetts fairly, according them the full protection of the law. For this reason, the Commonwealth has already undertaken implementation of the medical improvement standards required by *Miranda* v. *Secretary of H.E.W.* (514 F.2d 996, 1st Cir. 1975). Massachusetts has also joined with several disabled citizens represented by Greater Boston Legal Services in litigation seeking resolution of our dispute with the Secretary over the medical improvement standards articulated in the *Miranda* decision, applicable to all continuing disability reviews in the First Circuit. This litigation, entitled *Avery, et al.* v. *Heckler* is currently pending in the United States District Court in Massachusetts (C.A. No. 82-3963G). The plaintiffs will be moving for early resolution of the medical improvement issue in this pending litigation within the next few weeks.

Therefore, I hereby request that you exempt Massachusetts from processing disability cessations in Title II and concurrent cases, along with the nine other states that are affected by pending litigation. If for some reason you do not exempt Massachusetts from processing these cases, I would appreciate a statement of your reasons for refusing to do so, with clear directives as to the case processing standards you expect our Disability Determination Services unit to utilize in reviewing and processing them.

I will be please to meet with you to discuss this request further and to provide any additional information you need to resolve this matter.

Very truly yours,

JOHN MUDD,
Acting Secretary,
Executive Office of Human Services.

THE COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE DEPARTMENT,
Boston, MA, February 10, 1984.

Hon. MARGARET HECKLER,
Secretary, Health and Human Services, Hubert Humphrey Building, Independence Avenue SW., Washington, DC.

DEAR SECRETARY HECKLER: I tried to reach you earlier this week to let you know of the position I planned to take before a hearing of the Commonwealth's Legislative Special Commission on Social Security Disability. A hearing of the Special Commission was held yesterday to review the Commonwealth's response to your letter of January 24 on resumption of SSDI continuing disability reviews.

As you know, I have been extremely concerned by the implementation of the 1980 Social Security Amendments which mandate these reviews. The rules and procedures under which recipients of SSDI are reviewed must be made more equitable and more humane, and I have supported Federal legislation to correct current in-

equities. In the meantime, the states should not be asked to terminate the major, if not sole, source of support to our most vulnerable citizens unless we can be assured that those citizens are afforded full protection.

I have learned that your letter of January 24 is one of four different instructions being sent to Governors. Although the letters refer to uniform and equitable treatment of disability claimants and beneficiaries nationwide, this is not the case today—nor will it be if the states comply with the differing instructions in each letter.

In at least 11 states, you propose that processing be conducted under court imposed medical improvement standards. In at least seven others, states will be permitted to hold all medical cessations pending further consideration of litigation.

We are in the process of talking to our Regional Social Security Office to determine why Massachusetts was not placed in the pending litigation category and authorized to hold CDR cessations, as under my December order. However, until these questions are resolved and I am assured that disability recipients in Massachusetts will be fully protected, no Title II terminations notices will be sent from our Disability Determination Services to SSA.

I am also concerned that SSA is now opposing legislation before the Congress to improve the disability review process. Despite this new opposition, I am hopeful that pending disability reform measures will be approved early in this session of Congress.

I have asked Acting Secretary John Mudd to work with the Regional Social Security Commissioner Robert Green to clarify the issues outlined above and a copy of his recent letter to begin that process is attached for your review.

Sincerely,

MICHAEL S. DUKAKIS, *Governor.*

Chairman PICKLE. Now, Mr. Mudd, let me ask you two questions. Have the administrative orders that have come from Secretary Heckler from the SSA solved your problems in Massachusetts?

Mr. MUDD. Not at all. They've not solved the problems. We are in continuing discussions with our regional office to try and get the solutions; we believe we have been miscategorized; we believe that we have been instructed to take actions that would bring undue hardship and be unfair to our citizens.

Chairman PICKLE. All right.

Let me ask you, what do you think is going to happen in Massachusetts or other States if we continue under this present procedure, with 29 States out and without clear guidelines? What's going to happen to the disability program?

Mr. MUDD. I think it makes people lose respect for the program and it undermines what should be a fair and equitable national program. I think we have to have reform legislation. That is the only solution. That's the only action that is really going to bring a solution that can bring us back into both a national program and a fair program for our disabled citizens.

Chairman PICKLE. I must say to you that, at this point, the responsibility does lie with the Congress. We must have a statement by the U.S. Congress establishing uniform guidelines requiring evidence for medical improvement before you remove them, requiring uniformity within a circuit, providing these face-to-face hearings, and continuing the benefits to the ALJ level. Now, the law for continued benefits payments has expired. And though under present law beneficiaries have the guarantee of continuation of benefits for that month and 2 additional months afterwards, within 60 days that right will be gone. So, if we don't pass legislation within 60 days, then I would say the responsibility is going to lie against this administration for having blocked or not having helped to pass it. Surely we'll get that done, and I say to you that, from what I heard

this morning, I am very impressed that there is an even greater need.

I'd also say this to you, that Massachusetts has taken the lead in crying out against the injustices of these harsh and abrupt reviews. I guess Massachusetts has been more in the forefront than any other State. That speaks well of you leaders to show that concern for those disabled who can't help themselves. So, I appreciate your testimony. I accept responsibility that Congress must do something about this; and I'm hoping that we can do it. And I hope we can proceed on a bipartisan basis. Do you know, Mr. Mudd, if there's any disagreement in Massachusetts between Democrats and Republicans on whether we should do this?

Mr. MUDD. Fundamentally, I cannot believe there is any—this is a bipartisan issue here.

Chairman PICKLE. Why can't we get some legislation passed? And the fact that we have not been able to get it means that somebody is blocking it. And, at this point, it's the administration. Surely we can unbottle that.

Mr. Shannon?

Mr. SHANNON. Well, Mr. Secretary, I have had some discussions with the Social Security Commissioner's office about the Massachusetts situation. In the last conversation I had with them, some weeks ago, they told me that they are considering levying sanctions against Massachusetts and the other States that have not complied with the law. Do you have any view from them as to what they're considering or what they might be able to do under the law? When last I spoke to them, they were reviewing the whole situation, and, as I understand it, they have options ranging from federalizing the program in Massachusetts to taking financial action against Massachusetts. Have they threatened the State at all with any of this?

Mr. MUDD. We have received no specific statements about what sort of sanctions might be levied. We do know of one other option; there was an advertisement apparently in the Commerce Journal for private insurance companies—under contract to do reviews. I think the fundamental issue here, Representative, is that we have been trying to work cooperatively with the regional office and with the administration to try to come to some solution prior to their having a need to take recourse to sanctions.

We think that they have miscategorized us, and we have appealed that decision on their part. Also, we come back to the need for Federal action with the support of the national administration and the Congress. We cannot go through a period in which States are sanctioned because they are trying to protect the most vulnerable citizens in this country. It would be terrible for the Federal system and I hope we don't come to that.

Chairman PICKLE. Again, Mr. Mudd, we have to have Federal action?

Last week in Dallas a representative of our State government on behalf of Governor Mark White testified exactly as you did that the administrative procedures that were outlined by the SSA are not working, that there is chaos in the whole disability program, and that if we don't take action, then the entire review process as well as this program might come to a halt. Now, that's unthinkable. Surely there is a way to proceed in an orderly manner. And it

distresses me that we previously had an agreement with the administration. At every stage we checked with the administration as we proceeded with the legislation.

There was agreement. We changed things to satisfy them on some of the objections they had, particularly with respect to medical improvement and previous work. And we thought we had a bill that would be passed without a voice in the Congress objecting to it. And now the administration has testified that we don't need it. I just have to assume because of what looks like juggling of financial figures, that someone is being muzzled. And that doesn't speak very well of a society that continues to hide behind that kind of a barrier.

Mr. MUDD. So, if your leadership——

Chairman PICKLE. I appreciate it that you would come and I want you to express our appreciation to the Governor for your statement.

Mr. MUDD. Thank you.

Chairman PICKLE. Thank you very much.

Now, the Chair is going to ask another panel, Mr. Elmer Bartels to come forward. Mr. Bartels is the commissioner of the State of Massachusetts, Massachusetts Rehabilitation Commission. Yes, I saw you earlier, Mr. Bartels, if you'll come forward and take your position. We're very pleased to have you, Mr. Bartels. I'm going to ask Mr. Shannon to assume the chair at this point. I've got to now check on my reservations to see what my schedule would be. But I'm going to ask Mr. Shannon, who is the senior member of the Social Security Subcommittee, to assume the chair at this point.

But before you proceed, Mr. Bartel, I want to thank you for coming here and patiently waiting and allowing Mr. Mudd to proceed. I know you were scheduled earlier but we want to be sure to have him testify early because of his schedule. So thank you, sir, and you may proceed. Mr. Shannon.

Mr. SHANNON [presiding]. Thank you very much, Mr. Chairman.

STATEMENT OF ELMER C. BARTELS, COMMISSIONER, MASSACHUSETTS REHABILITATION COMMISSION, EXECUTIVE OFFICE OF HUMAN SERVICES, COMMONWEALTH OF MASSACHUSETTS

Mr. BARTELS. Mr. Chairman, this is the second opportunity that I have had to testify before your committee, the first having been in Washington this past June. There we talked about the needs for legislation to attend to the problems in the Social Security disability program and we outlined some of the necessary parameters that should be provided in that bill.

Since that time you have had the opportunity to work within this subcommittee, to work at the full committee level, and to come out with what we have called and what you are calling the Pickle-Shannon bill. We're very pleased to have Congressman Shannon's name on the bill that we feel addresses the necessary changes in the Social Security law that we have talked about this morning.

There are some key features there that I would like to discuss with you. A major one is in the area of medical improvement. We in Massachusetts have instituted a medical improvement standard in the context of the First Circuit Court decision called *Miranda*.

We have found that the procedures that we identified and which are reflected in the law that you have proposed are very compatible one with the other. Those procedures do work, they do have an effect on keeping people on benefits who ought to be on benefits. The reduction of cessations was clear. Approximately 87 percent of the people who are being reviewed now are being allowed to remain on benefits, as opposed to around 67 percent prior to that. So we have found that the medical improvement standards does, in fact, work and does make sense in the context of the program. We also urge——

Mr. SHANNON. Commissioner, would you—let me get those numbers again, 87 and 67?

Mr. BARTELS. Yes.

Mr. SHANNON. Thank you.

Mr. BARTELS. I have prepared a complete written testimony for you today. I also have a package of materials that I think will be helpful to the committee in looking at the medical improvement standards and the detailed procedures that go with that. We will submit that to the committee.

We also feel that there is a need for the continuation of benefits through appeal up through the administrative law judge level to be a permanent part of the act. That is reflected in your proposed legislation. We feel very strongly that should be the case. That position is fully reflected by the Governor's requirements that Massachusetts does not process cessations of any individuals until such time the Congress passes legislation. We're very pleased to see the commitments of Chairman Pickle to get a bill through the House and to work with the Senate to get a good bill passed.

I'll go into the third area that we feel is important and which is reflected in the Pickle-Shannon bill. This is the area of mental impairments. The criteria presently used by the Social Security Administration to determine whether individuals who have mental impairments can, in fact, work are really not good criteria. There is a body of methodology in the rehabilitation field that reflects the new thinking in that area. We have found that the approach that the Social Security Administration has used in times past is not appropriate and is not a good predictor as to whether individuals with psychiatric disabilities can, in fact, work.

Another area I'd like to talk about briefly is the vocational rehabilitation reimbursement program under the Social Security Act. Reimbursements to the rehabilitation agencies for providing rehabilitation services to handicapped people should be expanded and the States should be reimbursed for such services and evaluations as well.

My final point is that speed is of the essence here. I was very pleased to hear the chairman's comments and yours, Congressman Shannon, in regard to the need for a speedy resolution of this issue. Splitting up the bill from the tax bill may be necessary in order to pass in the House and get the bill on over to the Senate. Creating a constituency in this country will show the Senate that this is a very important program, and will urge the administration to resolve the problems in this national program that is in such disarray. I'd be glad to answer any questions that you might have.

[The prepared statement follows:]

STATEMENT OF ELMER C. BARTELS, COMMISSIONER, MASSACHUSETTS REHABILITATION COMMISSION

Last June I spoke to this honorable Subcommittee in Washington about the urgent need for reform to make the Social Security disability program responsive and fair to the disabled people it serves. I also described some of our Massachusetts experiences with that program. Your Subcommittee and its staff worked hard all summer to develop comprehensive legislation to remedy the problems in this program, which even today cause very serious hardships for people receiving or seeking disability benefits and result in constant public criticism of the program and its management. I want to endorse the disability reforms set forth in H.R.3755 sponsored by Chairman Pickle, Congressman Shannon and the other members of this Subcommittee. I urge you to act with all deliberate speed in reporting this legislation out for Congressional action.

In my testimony today, I'd like to stress three particular areas of concern which especially need legislative reform. Legislation is necessary to ensure that:

(1) beneficiaries whose claims are reviewed may elect to continue benefits on an interim basis throughout the full hearing process until a decision is rendered by an Administrative Law Judge;

(2) a medical improvement standard, similar to the model that we now employ here in Massachusetts, is implemented by the Social Security Administration for use on a nationwide basis; and

(3) procedures for evaluating mental impairments adequately and accurately reflect the ability of claimants to engage in work.

First, interim benefits must be available through an appeal to an Administrative Law Judge. This measure is necessary to ensure that no benefits are cut off until completion of a full and fair hearing by an impartial federal official. In December, 1982 Massachusetts put a temporary halt on terminination notices while Congress completed enactment of the first interim benefits law, P.L.97-455. Although the Social Security Administration vigorously objected to our position, we felt this action was essential to provide basic procedural fairness to the Title II beneficiaries, who had worked and contributed to the Social Security Trust Fund with the expectation that benefits were secure in the event of their disability.

We understand that some Social Security Administration officials do not support re-enactment of the interim benefits law; they support payment of benefits only through a face-to-face reconsideration hearing. In our judgment, this is not adequate, even though we in Massachusetts are fully committed to participating in a state face-to-face disability evaluation program that will improve the disability adjudication process. To facilitate this process, we have just sent our proposal to the Social Security Administration outlining the basic components for a system of face-to-face reviews by the state agency that would improve the effectiveness of the reconsideration process but would not substitute for the more formal fair hearings provided by federal Administrative Law Judges. The current Social Security Administration proposals for state face-to-face hearings at the state level simply do not provide enough protection to claimants and beneficiaries to assure that full impartial reconsideration hearings will occur in all cases. The additional training, expertise and neutrality of the Administrative Law Judges is critical to assure full due process before benefits are cut off in all Title II and Title XVI cases.

Second, I'd like to assure you that a medical improvement standard is desirable and workable. Here in Massachusetts we have implemented the medical improvement standard that is required under the First Circuit precedents established in **Miranda** v. **Secretary of H.E.W.** (514 F.2d 996, C.A.1, 1975.) We feel the standard is justified by the results, which have produced a 87.2% continuance rate in continuing disability reviews conducted between April 29, 1983 and November 25, 1983 compared with a 67.6% continuance rate for the comparable seven month period before we adopted and implemented the **Miranda** medical improvement standard here. (Statistics comparing the two periods are included in Appendix A) Not only is the continuance rate up, but it is our experience that the process encourages more thorough, careful case development focused on the individual and his/her particular medical disabilities in relation to previous diagnosis and symptoms, as well as the individual's ability to work.

The Massachusetts Disability Determination Services Division follows the usual steps in the sequential evaluation process, as required by the Social Security Administration, but we apply one additional step in evaluating continuing disability reviews.

Let me outline how our medical improvement process works. First the file is reviewed and all relevant current medical evidence is sought by the disability examiner working on the case. The claimant and his/her treating physicians are contacted and recontacted if necessary to seek medical evidence. Consultative evaluations are scheduled only if there is not sufficient current medical evidence in the file to assess the current condition. Then the examiner assesses the overall severity of the impairment as indicated by all evidence in the file. Consulting with an in-house physician as needed, the examiner reviews the case, to ascertain whether the impairments indicated by the evidence meet or equal the Social Security Listings, which identify certain presumptively disabling conditions that automatically permit benefit payment. If the individual's documented condition is equivalent to the Listings, the case is adjudicated, with a recommendation that benefits be continued. If the individual's condition is not equivalent to the Listings, the examiner gives the case to an in-house physician for a comprehensive review of previous and current medical evidence to ascertain whether or not medical improvement has occurred. If the evidence shows no medical improvement, the case is adjudicated and recommended for continuation of benefits unless the individual has actually returned to work or has obtained improved vocational skills consistent with his/her functional limitations. Next, if the evidence shows that vocational improvement does exist in a particular case and/or that medical improvment has occurred, the individual's residual functional capacity is evaluated using Social Security criteria to see whether the improvement is sufficient to permit substantial gainful activity (work, either at the individual's former job or work within the national economy.) If the evidence indicates that the individual has improved to the point of substantial gainful activity, the case is adjudicated and a termination is recommended. If the evidence indicates that, despite medical or vocational improvement, substantial gainful activity is still not possible, the case is adjudicated with a recommendation for benefit continuance. (A more detailed description of our Massachusetts medical improvement procedure is attached in Appendix B.)

Since April 1983 when we developed and implemented the **Miranda** medical improvement standards, it has been our experience that, with some increased effort by the in-house medical consultants in evaluating cases, the improved results in terms of a thorough, defensible disability evaluation process are well worth the extra effort. We have demonstrated that a medical improvment standard is fair and workable. We believe that it measures actual ability to work far more accurately than the Social Security sequential evaluation process alone.

Third, Congress must give a clear directive to the Social Security Administration requiring mental disability standards that accurately and realistically measure work capabilities. Cognitive skills alone do not predict how well or poorly a mentally disabled person can work. The Social Security Administration, must develop and implement effective and realistic methods of measuring the full range of work skills and behaviors in order to make accurate predictions about an individual's capacity for successful work in a non-sheltered, competitive environment. Current Social Security rulings setting forth presumptions about transferability of skills and unskilled work can too easily operate to disqualify a mentally impaired individual from benefits even though he/she cannot actually sustain successful job performance in often stressful competitive work environments. (See SSR 82-35c, 82-41 attached in Appendix C) The present Social Security standards for mental impairments fail to do justice to mentally disabled people who are filing new applications for benefits and to those whose claims are being evaluated in the continuing disability review process. We urge this Subcommittee to direct changes in the vocational assessment methodology for vulnerable mentally disabled people so that they are treated fairly in the disability determination process.

In addition, I will reiterate the importance of legislative changes to provide for disability standards that are consistent with eligibility for other disability programs, especially vocational rehabilitation. Here in Massachusetts all individuals whose Social Security benefits are terminated as a result of a continuing disability review receive a letter advising them of the potential availability of vocational rehabilitation services and referral to state-funded legal services to assist them in the Social Security appeals process. During the nine month period from mid-March to December, 1983, 1294 individuals were notified about these services, 225 responded expressing interest in vocational rehabilitation services and 155 also sought more information about legal services.

Finally, I want to stress the importance of immediate Congressional action on H.R. 4170, which is a very good comprehensive Social Security disability reform package. We have been working on our own procedures to improve the Social Security disability program, but there are limits to the effectiveness of state-by-state efforts to improve a national program. We need your support and leadership to change this program so that its standards and procedures are fair to the disabled people it serves.

Thank you very much for this opportunity to share our perspectives on this important topic that affects disabled people in Massachusetts.

The Commonwealth of Massachusetts
Executive Office of Human Services
Massachusetts Rehabilitation Commission

ELMER C. BARTELS
COMMISSIONER

Statler Office Building
20 Park Plaza
Boston, 02116

APPENDIX

STATEMENT OF COMMISSIONER ELMER C. BARTELS

CONCERNING SOCIAL SECURITY DISABILITY REFORM

BEFORE HOUSE WAYS AND MEANS SUBCOMMITTEE

ON SOCIAL SECURITY

CHAIRED BY THE HONORABLE J.J. PICKLE

FEBRUARY 24, 1984

A. 1982 and 1983 CDR Continuance Rates

B. Massachusetts Miranda Standard

1. Directive of Governor Dukakis to MRC/DDS concerning Implementation of Miranda Standards and compliance with federal court standards

2. MRC/DDS Information Bulletin - Procedures for Full Documentation and Evaluation of CDI Claims (April 20, 1983)

3. SSA Regional Program Circular - Miranda v. Secretary of H.E.W. (April 11, 1983)

4. MRC/DDS Memorandum - Revised Procedures for Adjudication of CDI Cases (June 21, 1983)

C. SSA Policies Concerning Unskilled Work and Transferrability of Skills

1. SSR 82-35c - Existence of Unskilled Sedentary Jobs

2. SSR 82-41 - Transferrability of Work Skills

35-871 O - 84 - 6

APPENDIX A

CDR STATISTICAL ANALYSIS

1983

Weekly Reports

DATE	DISPOSITIONS	CONTINUANCES	PERCENTAGE	CESSATIONS	PERCENTAGE
4/29	140	140	100.0	0	0
5/6	127	123	96.9	4	3.1
5/13	155	142	91.6	13	8.4
5/20	179	156	87.2	23	12.8
5/27	207	188	90.8	19	9.2
6/3	151	129	85.4	22	14.6
6/10	200	164	82.0	36	18.0
6/20	219	188	85.8	31	14.2
6/24	369	345	93.5	24	6.5
7/1	256	238	93.0	18	7.0
7/8	160	138	86.3	22	13.7
7/15	207	180	87.0	27	13.0
7/22	201	155	77.1	46	22.9
7/29	192	165	85.9	27	14.1
8/5	157	126	80.3	31	19.7
8/12	183	126	68.9	57	31.1
8/19	188	159	84.6	29	15.4
8/26	153	138	90.2	15	9.8
9/2	186	148	79.6	38	20.4
9/9	94	70	74.5	24	25.5
9/16	152	143	94.1	9	5.9
9/22	208	201	96.6	7	3.4
9/30	197	172	87.3	25	12.7
10/7	133	132	99.2	1	1.0
10/14	114	95	83.3	19	16.7
10/21	157	130	82.8	27	17.2
10/28	140	120	85.7	20	14.3
11/4	168	144	85.7	24	14.3
11/11	173	151	87.3	22	12.7
11/18	134	121	90.3	13	9.7
11/25	170	145	95.3	25	14.7
TOTALS	5,470	4,772	87.2%	698	12.8%

KMG:dm

APPENDIX A

CDR STATISTICAL ANALYSIS

1982

Weekly Reports -

DATE	DISPOSITIONS	CONTINUANCES	PERCENTAGE	CESSATIONS	PERCENTAGE
4/30	253	160	63.2	93	36.8
5/7	285	191	67.0	94	33.0
5/14	300	194	64.7	106	35.3
5/21	297	193	65.0	104	35.0
5/28	270	191	70.7	79	29.3
6/4	218	140	64.2	78	35.8
6/11	308	240	77.9	68	22.1
6/18	317	212	66.9	105	33.1
6/25	367	248	67.6	119	32.4
7/2	281	168	59.8	113	40.2
7/9	284	201	70.8	83	29.2
7/16	319	218	68.3	101	31.7
7/23	330	235	71.2	95	28.8
7/30	282	229	31.2	53	18.8
8/6	310	229	73.9	81	26.1
8/13	315	232	73.7	83	26.3
8/20	444	276	62.2	168	37.8
8/27	396	256	64.6	140	35.4
9/3	354	232	65.5	122	34.5
9/10	247	182	73.7	65	26.3
9/17	295	183	62.0	112	38.0
9/24	347	230	66.3	117	33.7
10/1	327	210	64.2	117	35.8
10/8	303	205	67.7	98	32.3
10/15	262	187	71.4	75	28.6
10/22	292	197	67.5	95	32.5
10/29	291	191	65.6	100	34.4
11/5	325	213	65.5	112	34.5
11/12	245	159	64.9	86	35.1
11/19	255	161	63.1	94	36.9
11/26	236	161	68.2	75	31.8
TOTALS	9,355	6,324	67.6%	3,041	32.4%

APPENDIX B

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

MICHAEL S. DUKAKIS
GOVERNOR

March 8, 1983

Elmer C. Bartels, Commissioner
Massachusetts Rehabilitation Commission
20 Providence Street
Boston, MA 02116

Dear Commissioner Bartels:

The Commonwealth of Massachusetts has a proud history of protecting the rights of disabled people and developing programs and policies that are responsive to their needs. My administration values that tradition. Many of the problems we encounter with this program currently exist in every other state. This letter expresses my concerns and directs certain initiatives for the Disability Determination Services program.

Some of my concerns and those of Secretary Carballo have recently been addressed by the Massachusetts Special Commission on Social Security Disability, and by the Commissioner's Task Force on Social Security Disability, a group of disability advocates whom you convened last Fall to help identify problems and develop solutions to resolve them. Other issues are currently receiving Congressional attention, as new national Social Security Disability policies are forged.

I am aware of the complexities of the issues involved, the varying interpretations of federal and state laws, policies and directives, and the differing viewpoints and interests that affect the Disability Determination program. Nevertheless, I am committed to providing every disabled person in the Commonwealth full consideration for all the services to which he or she may be entitled.

Therefore, I hereby direct you to undertake and initiate the following actions:

1. Issue by March 31, 1983 written State policies and procedures to ensure that Massachusetts Rehabilitation Commission's standards for determining continuing eligibility for Social Security benefits are consistent with the First Circuit Court of Appeals standards set forth in Miranda v. Secretary of H.E.W. 154 f.2d 966 (1975) and any other applicable decisions of the First Circuit.

2. Request authorization from the Social Security Administration that Massachusetts be designated as a demonstration site for a pilot program of face-to-face interviews with claimants before recommending any cessation of their benefits.

3. Submit to the Secretary of the Executive Office of Human Services by March 18, 1983 a Corrective Action Plan with concrete implementation measures, to improve the quality and accuracy of determinations on continuing disability investigations (CDI) cases.

4. Report weekly to the Secretary of the Executive Office of Human Services on the progress and status of the implementation of the recommendations of the Commissioner's Task Force on Social Security Disability.

5. Establish procedures for referral of denied recipients to vocational rehabilitation services; provision of information and referral to legal assistance as funded by the Supreme Judicial Court; and informing recipients who are denied benefits of their appeal rights and required procedures.

6. Request authorization from the Social Security Administration for a demonstration program which would create a state-operated claimant assistance program. This program would provide active individual assistance to denied recipients on an individual case basis for the purpose of assuring that these persons have every opportunity for employment and necessary supportive services.

We must continue to improve access to governmental services for disabled people to the end that they may live and participate on a full and independent basis in the communities of the Commonwealth.

Very truly yours,

Michael S. Dukakis
Governor

MSD:mdm

cc: Manuel Carballo, Secretary
EOHS

APPENDIX B

ELMER C. BARTELS
COMMISSIONER

The Commonwealth of Massachusetts
Massachusetts Rehabilitation Commission
Statler Office Building
20 Providence Street
Boston, 02116

INFORMATIONAL BULLETIN

TO: DDS Case Processing Staff and In-House Consulting Physicians

FROM: Commissioner Elmer C. Bartels
Assistant Commissioner Kasper M. Goshgarian

DATE: April 20, 1983

RE: PROCEDURES FOR FULL DOCUMENTATION AND EVALUATION OF CDI CLAIMS

The attached Social Security Administration (SSA) Program Circular (Advance Copy) was developed in an attempt to consolidate and outline the key developmental and evaluation policies that presently exist to adjudicate CDI cases. This Bulletin will clarify the requirements of the circular in order to ensure that each CDI case is properly developed and documented before a disability determination is made.

As you know, there has been a great deal of discussion lately about the type of evidence necessary to support a cessation decision in a CDI case, especially concerning Miranda v. Secretary of H.E.W., a First Circuit Court of Appeals case decided in 1975. In light of that discussion, you should particularly note sections 1, 2 and 4 of the attached circular, which point out that disability benefits may not be terminated unless there is substantial current evidence in the beneficiary's record which indicates that the beneficiary is now able to engage in substantial gainful activity (SGA). It is clear from Miranda that in order to make this determination, recent evidence must be secured which then must be compared against the previous evidence upon which earlier determinations of disability were based. If, substantial current evidence indicates that one of the following conclusions can be reached, then a cessation decision is justified:

(1) The beneficiary's medical condition has improved so that the beneficiary can now engage in SGA; or

(2) The earlier decision(s) or the diagnosis of impairment was clearly erroneous and the person can engage in SGA; or

(3) The beneficiary has returned to SGA; or

(4) The beneficiary's vocational skills or capabilities have improved as a result of training, education, or experience so that the beneficiary can now engage in SGA; or

(5) There are newer clinically approved methods of evaluating the beneficiary's impairment which indicate a less severe level of impairment than was found at the earlier determination of disability and the beneficiary has the vocational skills, including age, education and relevant work experience, to engage in SGA; or

(6) There have been changes in medical treatment, procedures or assistive devices which are generally acceptable and available to the beneficiary and the beneficiary has the vocational skills, including age, education and relevant work experience to engage in SGA.

You should make a determination that the beneficiary's disability has ceased only if there is substantial evidence in the record supporting one of the six reasons listed above. Thus, when a beneficiary's record contains neither sufficient evidence of medical improvement to permit SGA nor enough evidence to justify a cessation decision for any of the other five reasons listed above, you will normally make a determination that the beneficiary's disability continues. In addition, you should state in the rationale which of the reasons for cessation you are relying upon.

As the attached circular makes clear, it is imperative that there be recent and substantial evidence of the beneficiary's current ability to engage in SGA to justify a determination that his or her disability has ceased. Implicit in sections 1, 2, and 4 of the circular, and explicit in Miranda and other court cases is the requirement that you assess and compare new and old evidence. The comparison of such evidence should be clearly documented in the rationale for each case determined appropriate for cessation. Performing this comparison will assist you in documenting the reasons for the cessation, and will help beneficiaries understand the basis of the determination that disability has ceased.

Issuance of the attached circular and this informational bulletin are only a part of our ongoing efforts to improve the CDI adjudication process. The recently established CDI Speciality Units will serve to focus the proper developmental attention to all CDI cases to assure the sufficiency of medical and related non-medical evidence. Specialists at the Quality Assurance level will provide the proper partnership approach in the total review process. Before any case leaves the DDS with a recommendation for cessation, it will have first been reviewed by a CDI Speciality examiner and physician and then by speciality Quality Assurance personnel. This process will be supported by on-going training for supervisors, examiners and physicians.

We hope that these efforts will assure that every consideration is given to beneficiaries during the adjudication process.

We thank you for your concerted efforts in this process.

Elmer C. Bartels
Commissioner of Rehabilitation

Kasper M. Goshgarian
Assistant Commissioner

REGIONAL APPENDIX B

SSA PROGRAM CIRCULAR

Disability Insurance

No. 83-5 BOSTON REGION Date: 4-11-83

MIRANDA v. SECRETARY OF HEW

We are constantly striving to assure that the Social Security disability provisions, as described in the law and implementing regulations, are carried out in a fair and equitable manner. In formulating and refining disability development and evaluation policies, we pay particular attention to the interpretation of these provisions as applied to individual cases by the Federal courts of appeals in the various circuits.

One such decision, Miranda v. Secretary of Health, Education and Welfare, 514 F.2d. 996 (1st Cir. 1975), made several important points especially relevant in the continuing disability investigation (CDI) context, which are embodied in our present policy guidelines. In view of SSA's large continuing disability workloads, and our responsibility to provide adequate protection of people's rights, e.g., to assure that those beneficiaries entitled to receive benefits continue to receive them, it is essential that all of our disability development and evaluation policies be emphasized and closely observed. Toward this end, we have prepared the following analysis of the issues discussed in the Miranda decision, and its relationship to SSA's policies:

1. Sufficiency of Evidence

   In determining whether an individual continues to be disabled, current medical evidence will be obtained (Social Security Ruling (SSR) 82-64). Any medical treatment received within 12 months of the initiation of the CDI must be considered as a potential source of current medical evidence (POMS DI E2800). Moreover, SSR 83-15 points out that in certain situations (such as chronic mental impairments) a single recent examination may not always properly describe an individual's sustained ability to function. In those situations, a longitudinal picture of the current effects of the impairment must be obtained for the evidence to be complete. This point is emphasized in POMS DI T2213.

Distribution: All DDSs in Region I.
Retention Date: September 30, 1983

The Miranda decision is in accord with this policy. It provides that once a claimant is found to be disabled, benefits may not be terminated without substantial evidence to justify so doing. All available evidence secured in connection with the original determination, plus recent medical evidence from the last 12 months, must be considered in determining whether disability continues (SSR 82-64).

2. Need to Show Medical Improvement

Cessation occurs whenever a beneficiary does not meet the definition of disability. One reason a person does not meet the definition of disability is medical improvement. Other reasons include but are not limited to: error in the original decision or diagnosis of the impairment; the claimant's return to work, the claimant's vocational skills or capabilities have improved as a result of training, education or experience; there are newer methods for evaluating impairment which indicate a different level of severity; there have been changes in medical treatment, procedures or assistive devices which are generally acceptable and available to the claimant.

Miranda points out that while the evidence justifying the cessation will normally show that a claimants's condition has improved to the point of his being able to engage in SGA, the evidence may show that the claimant's condition for any number of reasons no longer prevents the claimant from engaging in SGA. Thus, it is consistent with SSA policy with respect to the cessations (see SSR 82-64 SSR 82-66 and soon to be issued POMS DI 00401.801 and .810).

Miranda further states that SSA can take into account medical evidence considered earlier when disability was first established in determining whether benefits should be terminated.

3. Allegation of Severe Pain

Guidelines in SSR 82-58, and POMS DI 2205, in addressing the consideration that must be given to symptoms in the evaluation of impairment severity and functional limitation, contain extensive guidance and examples of the evaluation of pain in its effect on disability determination. These guides also emphasize the need for medically acceptable clinical and laboratory diagnostic techniques to support the overall evaluation of impairment severity.

There must be sufficient medical evidence in the record to permit consideration of pain allegations in evaluating disabilty.

When alleged symptom-related limitations are clearly out of proportion to clinical and laboratory findings, yet the beneficiary alleges severe pain, the possibility of a mental impairment should be investigated and consideration given to obtaining psychiatric evaluation (SSR 82-58). As explained in the Miranda decision, while pain is "subjective," clinical techniques may shed some light on the probability of its existence, magnitude and disabling effects.

4. Duty to Provide Evidence

All evidence secured in connection with the original determination, plus recent medical evidence, is considered in determining whether disability continues (SSR 82-64). Guidelines in POMS DI 2864 and SSR 82-64 indicate that a cessation decision may not be made on the basis of temporary improvement or examination reflecting the result of rest. Consistent with this approach, the evidence provided by the individual's treating physician must be considered, especially any medical regimen prescribed by the treating physician and the reasons for such treatment.

The Miranda decision indicates that the claimant continues at all times to be under a duty to exercise reasonable diligence in furnishing SSA with evidence relevant to his claim, but it is for SSA to determine what weight to give particular items of evidence.

5. Ability to Get a Job Vis-a-Vis Ability to Do a Job

Title II workers or CDB applicants, or title XVI claimants age 18 or older, are unable to engage in any SGA, if by reason of their impairment(s) they are not only unable to do past relevant work, but cannot, considering their age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy regardless of whether such work exists in the immediate area in which the individuals live, or whether a specific job vacancy exists, or whether the individuals would be hired if they applied for work (SSR 82-53, POMS DI 2093.1).

The Miranda decision provides that the standard for determining whether a claimant is entitled to Social Security disability benefits is not whether the claimant could actually locate a job, but whether physical or mental impairments prevent him from engaging in substantial gainful work which exists in significant numbers either in the region where the claimant lives or in several regions of the country.

DISABILITY DETERMINATION SERVICES

M-E-M-O-R-A-N-D-U-M

TO: Case Processing Staff

FROM: Kasper M. Goshgarian, Assistant Commissioner

DATE: June 21, 1983

SUBJECT: Attached Revised Procedures for the Adjudication of CDI Cases

Over the past several weeks, we have implemented several strategies that resulted in significant improvement in the adjudication of CDI cases. The two major changes that have effected the process have been the specialization of the CDI function within each region and the implementation of procedures and guidelines that are consistent with Miranda, 1975. Today, we have examiner, supervisory and physician staff who are knowledgable and well versed in the application of those standards that result in the fair and equitable review of cases on behalf of the beneficiaries of the disability program.

Since the implementation of the guidelines associated with Miranda, several areas of concern have been raised. The attached Revised Procedures for the Adjudication of CDI Cases attempts to address the concerns that have been raised to date. More specifically, the document addresses the following areas:

1. Case Development and Documentation
2. Clarification of Six Criteria for Cessation
3. Green Check Cases Procedures

The clarification provided in this document should serve to reduce or eliminate any confusion regarding future implementation strategies. It should be noted that the systems that are developed must remain flexible to accommodate change on an as needed basis. As our experience with these procedures increases, other changes may be instituted in an effort to continually assess and improve the adjudication process.

Lastly, procedures are only effective if implemented by dedicated and concerned staff. I want to thank each of you for your commitment and contributions. I encourage you to continue providing input into this process and other issues related to the adjudication process.

Kasper M. Goshgarian

Kasper M. Goshgarian,
Assistant Commissioner

KMG/pap

REVISED PROCEDURES FOR THE ADJUDICATION OF CDI CASES

Over the past several weeks, we have all gained experience in the implementation of the six (6) step cessation procedures that are consistent with the Miranda decision of 1975. As stated at the first training session, our implementation strategies must be flexible and dynamic. Change must be instituted based on our collective implementation experiences. Our goal remains unchanged. The Commonwealth of Massachusetts wants to administer a fair and equitable adjudication program for CDI beneficiaries that is consistent with the spirit and intent of applicable case law (Miranda, 1975). Based on the mastery of skills that have been gained over the past several weeks, we are ready to make specific revisions that are in keeping with the true intent of the Miranda decision. These revisions will result in a better review process for the beneficiaries of the disability program.

I. CASE DEVELOPMENT AND DOCUMENTATION

A key factor in the accurate adjudication of CDI cases is proper case development and documentation. Sufficient evidence in the case file is necessary in order to provide a longitudinal picture of the current effects of an individual's impairment. In order to provide a longitudinal perspective, all available evidence secured in connection with the original determination plus recent medical evidence from the past twelve (12) months must be considered.

Proper case development must include a comprehensive methodology for securing appropriate medical evidence. The most important and influential evidence should be that secured from an individual's treating physician. It is the treating physician who has the most experience with the beneficiary. As such, his/her report must be aggressively sought and utilized in the determination process.

One problem with treating physician reports has been their lack of quality and timely submission. In order to deal with this training need, I had asked each unit to provide a list of those physicians who have demonstrated either quality or timeliness deficiencies. This list of physicians was recently completed and sent to the Program Development Department for training and follow-up. By July 3, 1983, each identified physician will be sent appropriate training materials based on his/her special need. This material will include the following:

1. Explanatory letter emphasizing the importance of their role in providing an accurate decision on behalf of the beneficiary.
2. A copy of the SSA Listings.
3. An article on the Social Security Disability Program submitted by DDS to the appropriate medical journals.
4. Sample reports by specialty.

Units will be asked to assist in the monitoring of this training effort and identify those sources where the desired change has not occurred. Further training follow-up will be provided to these identified physicians.

Additionally, the Treating Physician Training Referral Form continues to be available for your use. If an inadequate report is received, you may use this form to identify the specific nature of the inadequacy. Training materials will be provided to all such identified treating physicians.

An essential component of utilizing treating physician reports is a thorough methodology employed for requesting this information and making appropriate follow-up attempts. Obtaining treating physician reports must employ the skills of both the examiner and the unit physician. Each has an important role to play during the process. A recommended procedure to be followed within each unit to assure consistency is as follows:

1. An explanatory letter be sent to each benficiary whose case is scheduled for review. This letter will stress the importance of his/her role in obtaining proper input from the treating physician(s). This letter is currently being revised and will be made available to each unit shortly.

2. The examiner will contact in writing all treating physicians listed on the beneficiary's application.

3. The examiner will make a follow-up call to the treating physician(s) within seven (7) to ten (10) days after the written request. Examiners should stress the importance of the reports with the physician during this call.

4. If the report is still not received, the examiner should make a second follow-up call within seven (7) days of the first call.

5. If there is still no response after seven (7) days, the examiner should give the case to the unit physician. The unit physician will be required to make this last follow-up call to the treating physician.

Implementation of the above outlined procedure will assure that every possible effort has been made to secure treating physician information. Additionally, calls should be made to treating physicians when the report is received but is inadequate in scope to render an appropriate adjudication decision.

Once it has been determined that the above steps have been exhausted and yet an adequate report has not been received, appropriate consultive examinations (CE's) may be ordered. Treating physician

reports will always be considered the information of choice. CE's are ordered when the treating source(s) does not respond or responds with insufficient federally required data necessary to provide a decision. Additionally, CE's may be used to resolve conflict in the data provided by two or more treating physicians. Lastly, a CE may be necessary when a beneficiary alleges a disabling condition outside the specialty of his/her treating physician. In order to maximize the usefulness of the CE results, it is important to provide the CE physician with appropriate available medical information regarding the beneficiary's medical condition.

In summary, examiners and unit physicians must continue to take an aggressive posture in their attempts to obtain information from treating physicians. If an examiner is having difficulties in this area, appropriate support should be provided by the unit supervisor. Obtaining treating physician reports can often be a frustrating experience. However, the importance of such reports cannot be over-emphasized. Additionally, all efforts must be made to assure that when CE's are necessary, the reports be comprehensive in scope and content. No beneficiary's benefits should be in jeopardy without the presence of substantial medical evidence. This longitudinal evidence should be capable of providing a then/now comparison of the beneficiary's medical condition. Based on the results of such comparative data, further analysis can be made regarding a beneficiary's capacity to engage in substantial gainful activity.

II. CLARIFICATION OF SIX CRITERIA FOR CESSATION

Over the last few weeks, considerable questions have been raised regarding the specific interpretation of the six (6) criteria that could result in a cessation decision. As expected, our experience with the implementation has raised several areas of concern. The most problematic issues that have been raised are the use of such methodologies as RFC's and Vocational Grids in those cases where a beneficiary's condition has remained unchanged or has, in fact, further deteriorated. The use of these methods could potentially result in a cessation decision without the presence of an appreciable change in the beneficiary's condition. As such, the interpretation that such procedures represent newer, clinically approved methods of evaluating a beneficiary's impairment is not valid.

It should also be noted, however, that the application of standards consistent with Miranda, 1975, are not restricted to medical improvement alone. Specifically, the language of Miranda is as follows:

> "Once having found that claimant for social security disability benefits is disabled, Secretary of HEW may not terminate benefits without substantial evidence to justify so doing and such will normally consist of current evidence showing that the claimant's condition has improved to the point of his being able to engage in substantial activity or evidence that the claimant's condition is not as serious as once supposed."

The above indicates that medical improvement is only one factor that could result in a cessation decision. As such, it represents cessation criteria #1. However, cessation criteria #2 through #6 are equally important and must be considered in each case reviewed. For purposes of review, the total six (6) criteria remain as follows:

1. The beneficiary's medical condition has improved so that the beneficiary can now engage in SGA; or

2. The earlier decision(s) or the diagnosis of impairment was clearly erroneous and the person can engage in SGA; or

3. The beneficiary has returned to SGA; or

4. The beneficiary's vocational skills or capabilities have improved as a result of training, education or experience so that the beneficiary can now engage in SGA; or

5. There are newer clinically approved methods of evaluating the beneficiary's impairment which indicate a less severe level of impairment than was found at the earlier determination of disability and the beneficiary has the vocational skills, including age, education and relevant work experience, to engage in SGA; or

6. There have been changes in medical treatment, procedures or assistive devices which are generally acceptable and available to the beneficiary and the beneficiary has the vocational skills, including age, education and relevant work experience to engage in SGA.

Thus, criteria #1 through #6 represent the total universe that could be potentially indicative of a cessation decision. All six (6) bear equal importance in the process and must be addressed accordingl They represent the range of possibilities that could result in a cessation decision in accordance with the intent of Miranda, 1975.

It must also be emphasized, however, that each cessation criteria (except #3) has essentially two distinct dimensions. The first part of each criteria calls for a demonstrated measurable change in the beneficiary's condition based on documented medical and/or vocational evidence. These changes may include the following:

1. A beneficiary has demonstrated documented improvement in his/her medical condition which would be expected to result in a significantly better functional level. (See Exhibit I).

2. A clearly erroneous medical and/or vocational decision was made based on the information available and the regulations, guidelines, etc. used at the time of the original decision or last review.

3. A beneficiary has returned to SGA in the only criteria that requires a single dimensional change.

4. A beneficiary has improved in terms of gaining newer, more marketable vocational skills consistent with his/her functional limitations.

5. Conclusions regarding a different level of severity of the condition is reached through the implementation and/or interpretation or newer, clinically approved medical assessment modalities. These newer methods include such tests and procedures as Doppler Tests and Exercise Tolerance Tests. A complete list of all new tests as a result of Listing changes is included in Exhibit II.

6. A beneficiary has improved in terms of his/her functional abilities based on the availability of improved medical treatment and/or assistive devices. An example of such improved medical treatments is coronary bypass surgery which could eliminate or greatly reduce angina pain upon exertion. Based on the amount of demonstrated improvement, a beneficiary's function level could be enhanced.

Once a conclusion is reached regarding the first dimension of each criteria, appropriate case processing decisions must be made based on results of this assessment. If no positive change is demonstrated based on the first dimension of any one of the six (6) criteria, the case is continued without the application of any further assessment procedures. If, however, a positive change in the first dimension of any criteria is demonstrated and documented, an appropriate assessment of the second dimension (the beneficiary can now engage in SGA) must be made. Thus, a positive change in the first dimension of any of the cessation criteria does not necessarily translate into a cessation decision. A cessation decision must be based on improvement and/or other change of sufficient magnitude that would render the beneficiary able to engage in substantial gainful activity.

A comprehensive tool devised to implement the above assessment is found in Exhibit I (CDI Decisional Sheet). Under the above revised strategy, this Decisional Sheet becomes an integral part of the case since it constitutes a valuable adjudication tool. This revised form not only calls for a comparison of past and present medical evidence, but also requires the unit physician and examiner to draw medical and vocational conclusions respectfully. The form will serve to fully assess the first dimension of each of the cessation criteria. The specific operational procedures for utilizing this form are as follows:

1. The examiner fully develops the case with appropriate attention to obtaining all necessary treating physician reports as previously outlined.

2. The examiner fills out the necessary demographic information at the top of the CDI Decision Sheet.

3. The case is given to the unit consultant for an indepth analysis of the medical aspects at the time of the last review and now based on the current medical information. It is important that the physician be both specific and thorough in this assessment. Evidence must be expressed in terms of objective medical findings based on the results of examinations, tests, documented symptoms associated with specific medical conditions, etc. Additionally, specific sources of such objective evidence must be cited.

4. Based on the analysis of the medical factors longitudinally, the unit physician must render a medical conclusion. If no change is demonstrated in categories #1, #5, #6, the physici checks the first choice and provides an explanation as to wh measurable change has not occurred. If change has occurred based on the evidence in file, the physician must assess the magnitude of the change. If a clearly documented change in the medical evidence (objective tests, clinical examinations symptoms, signs, etc.) has occurred which would be expected to result in a significantly better functional level, the unit physician would check the second choice and provide an appropriate explanation. If a clearly erroneous medical decision was made at the last review based on the evidence and criteria available at that time, the physician would check the box "other" and explain. Upon completion, the unit physician's signature is required.

5. If change of sufficient magnitude in the medical factors is documented, the physician would check-off the appropriate medical categories on the front of the sheet. The case is returned to the examiner for vocational analysis.

6. If the beneficiary has returned to work (SGA level) or has obtained improved vocational skills consistent with his/her functional limitations, the examiner makes note of such changes under the heading vocational conclusions. If the beneficiary has returned to work, the examiner must indicate the type of work and approximate weekly or annual earnings. In like fashion, the exact nature of the improved vocational factors must be fully explained and documented. If a clearly erroneous vocational decision was made at the time of the last review based on the information and criteria available at that time, the examiner would check the box "other" and explain. Upon completion, the examiner's signature is required.

7. If improvement in the vocational factors is noted, or the beneficiary has returned to work, the examiner will check-off the appropriate categories on the front of the sheet.

The above seven (7) steps outlines a comprehensive assessment methodology of the first dimension of the cessation criteria. Again, a positive change does not necessarily translate into a cessation decision. An appropriate assessment of SGA factors is also necessary

Once the CDI Decisional Sheet is completed based on the above outline examiner/physician procedures, the following operations may ensue:

1. If none of the six criteria boxes on the front of the sheet are appropriately checked, the case is continued - there is no need to apply any other procedures such as RFC assessment or Vocational Grids. This represents the end of the assessment process.

2. If any one or more of the six criteria boxes are checked, then the remainder of the sequantial analysis process is applied as appropriate. This would include the use of the RFC assessment and Vocational Grids. Thus, it must be emphasized that change does not necessarily translate to cessation decision. Rather, a change would indicate the need for further assessment regarding SGA potential. Many beneficiaries may demonstrate medical improvement that could improve their functional level. Yet, the magnitude of the change is not sufficient to render them able to engag in SGA.

The above methodology provides a fair and equitable manner of reviewing CDI cases. It is consistent with the true spirit and intent of Miranda. Proper implementation through the full commitment and responsiveness of all staff will result in a system that is fully responsive to the needs of the beneficiaries and the intent of the disability program.

III. GREEN CHECK CASES

Our experience indicates that a few CDI cases arrive at this agency where the past medical information is not available either through loss or misplacement. It is important that these cases be adjudicate through the same procedures consistent with Miranda. More specifically, in order to render an adjudication decison, substantial evidence of a longitudinal nature is necessary.

In an effort to assure such a longitudinal assessment, the examiner must attempt to obtain all pertinent information at the time of the last review. Unit physician support may be necessary if the examiner is unable to obtain reports from identified provider sources. Additionally, through the usual manner, current medical data must be obtained. Based on the results of the attempts to obtain necessary past medical evidence, the following actions will be implemented:

1. If appropriate past and current information is obtained, the case will be adjudicated through the usual prescribed adjudication methods governing CDI cases.

2. If the past medical evidence is not available after a concerted examiner/physician effort has been made to obtain such data, one of the following actions will be taken:

    a) If the current information is indicative of a continuance, a continuation decision will be recommended.

    b) If the current data alone does not result in a continuation decision, the case will be returned to SSA as a "no decision case".

    All such no decision cases will be returned with the following notation:

    "Substantial medical evidence to provide a longitudinal assessment of the beneficiary's condition is not available and cannot be obtained. Thus, an accurate decision cannot be reached in accordance with the policies, procedures and guidelines governing the review of CDI cases."

The above methodology will provide a fair and equitable system for evaluating those cases lacking sufficient past medical data.

BENEFICIARY'S NAME: SSN:

Last Allowance Date: ☐ With Diary Date_____ ☐ No Diary Date

Authority: Initial ☐ Recon ☐ ALJ ☐ Other ☐

Allowance Code: Meets ☐ Equals ☐ Vocational ☐

Reason for Current CDI: Diary Date ☐ Periodic Review ☐ Other ☐

CESSATION CATEGORIES

☐ MEDICAL IMPROVEMENT
☐ INCORRECT DECISION (SSA Regulations and POMS in effect at time of decision)
☐ RETURN TO SGA
☐ IMPROVEMENT IN VOCATIONAL FACTORS
☐ NEWER CLINICALLY APPROVED METHODS (Medical Tests)
☐ CHANGES IN MEDICAL THERAPY AND DEVICES

MEDICAL EVIDENCE THEN (Include objective medical findings with sources cited)	MEDICAL EVIDENCE NOW (Include objective medical findings with sources cited)

575 (4th Cir. 1976). This was likewise the ruling in *Holguin* v. *Harris*, 480 F.Supp. 1171, 1181 (N.D. Cal. 1979), where the court stated:

> . . . Where the conclusion of the Secretary is within the common knowledge and experience of ordinary men, it requires no substantiation by a vocational expert.

Accordingly, it appears that under the present law of this circuit, the substantial evidence rule does not require that the decision of the administrative law judge be further supported by the testimony of a vocational expert.

* * * * *

IT IS ORDERED that judgment be entered in favor of defendant and against the plaintiff, dismissing the complaint and action on the merits and affirming the decision of the Secretary of Health, Education and Welfare.

H. 82-35c

SECTIONS 216(i) and 223(d) (42 U.S.C. 416(i) and 423(d)) DISABILITY INSURANCE BENEFITS—INABILITY TO PERFORM PREVIOUS WORK—EXISTENCE OF UNSKILLED SEDENTARY JOBS

20 CFR 404.1503-404.1513* **SSR 82-35c**

Jones v. Harris, 1A Unemployment Insurance Reporter (1980 Transfer Binder) ¶17,074 (E.D. TENN., Northern Div. 1980)

The plaintiff, who is 39 years old and has an eleventh grade education, applied for Disability Insurance Benefits, alleging that he was totally disabled because of a back injury and the pain resulting from it. Although the plaintiff is unable to perform the tasks required by his former occupation, the evidence of record fails to show that he suffers from any exertional or nonexertional impairments or symptoms, including pain, which would prevent him from performing unskilled sedentary work. When the Social Security Administration (SSA) determined, under Rule 201.24 in Table 1 of Appendix 2, Subpart P, Regulations No. 4, that the plaintiff was not disabled and denied his application, the plaintiff appealed. He contended that SSA had failed to prove that there was work in the national economy which he could perform. *Held*, live testimony regarding the existence of work in the national economy which the plaintiff could perform is unnecessary because the rules and tables in Appendix 2 (as pointed out in 20 CFR 404.1513) are based on a wealth of available information concerning the existence of such jobs. *Further held*, SSA's finding that the plaintiff meets each of the criteria in Rule 201.24 is supported by substantial evidence and thus SSA's determination that the plaintiff is not disabled must be affirmed.

TAYLOR, District Judge:

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*The regulations used to make disability determinations under titles II and XVI of the Social Security Act were recodified effective August 20, 1980. See 45 FR 55566-55634 (1980) (recodified in 20 CFR 404.1501-404.1598 and 20 CFR 416.901-416.998). The regulations cited in this ruling have been renumbered and rewritten as part of the recodification, but not substantively changed. See §404.1560-§404.1569 and Rule 201.24, Appendix 2, Subpart P of Regulations No. 4.

The plaintiff is a 39-year-old man with an eleventh grade education. He has had some mechanical training and experience, but his occupation at the time of his injury was a grocery store stock clerk. Around the first of April, 1977, plaintiff suffered a herniated disc while working. Although this injury was surgically treated, plaintiff claims the injury to his back, with attendant pain, totally disables him.

Plaintiff's application for disability benefits was filed on October 3, 1977. His claim was denied initially and upon reconsideration. Plaintiff reapplied for benefits, and was denied again. An administrative hearing on plaintiff's claim was held on July 17, 1979. The Administrative Law Judge (ALJ) found plaintiff not to be disabled and denied benefits. This decision was approved by the Social Security Appeals Council, thereby becoming the final decision of the Secretary of Health, Education and Welfare. The only question before this Court is whether the Secretary's finding of no disability is supported by substantial evidence.

The plaintiff's treating physician, Dr. James Riccardi, an orthopedic surgeon, reported that plaintiff could not perform repetitive heavy lifting as was required in his former occupation. Dr. Riccardi felt plaintiff could perform a full range of sedentary work and characterized plaintiff's pain as mild and intermittent.

Doctor Samuel Marcy, an orthopedic surgeon, said repeated bending and stooping would cause "rapid recurrence of significant back pain" and that "light work" as defined by the Social Security Administration would be too strenuous. Dr. Marcy concluded that "bench-type vocational rehabilitation work would be in order."

Doctor Edward Tauxe, an orthopedic surgeon, said plaintiff is "unable to do significant bending, stooping, and lifting."

The ALJ found that plaintiff is prevented from doing his former occupation but is not prevented from performing sedentary labor. The ALJ specifically discounted pain, insofar as it would prevent sedentary work, because of a lack of objective medical findings consistent with such pain.

In the opinion of the Court, these findings are all supported by substantial evidence, and in fact are not contradicted in the record. In 20 C.F.R. § 416.910 sedentary work is defined as occasionally lifting no more than ten pounds, and sitting with occasional walking and standing. The recommendations of Dr. Tauxe and Dr. Marcy against stooping, bending, or significant lifting are not inconsistent with this definition of sedentary labor.

Plaintiff complains that the Secretary has not carried his burden of proving that there is work in the national economy which plaintiff can perform, as required by *Hephner* v. *Matthews*, 574 F.2d 359, 361 (6th Cir. 1978). It is true that the record contains no concrete evidence in this regard. In the past such evidence was usually provided by the testimony of a vocational expert. The Secretary now relies on the regulations found at 20 C.F.R. § 404.1513 and Appendix 2 to Subpart P of the Social Security Regulations. Section 200.00(b) of Appendix 2 provides as follows:

> The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; i.e. in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels, . . . Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. . . .

The ALJ found that plaintiff is a younger individual, between 18 and 44, with a limited education, had only unskilled work experience and could perform sedentary labor. The ALJ further found that plaintiff suffered no non-exertional impairments, such as pain, which would prevent him from performing a full range of sedentary labor. Each of these findings is supported by substantial evidence. Thus, plaintiff fits all the criteria found in Table No. 1 of Appendix 2, Rule 201.24. This rule directs a finding of not disabled in such a case, on the grounds that significant numbers of jobs do exist which a person of plaintiff's age, experience, background and physical capacity could perform, Section 201.00(h), 20 C.F.R. Subpart P, App. 2. As Regulation number 404.1513 points out, these tables and rules are based on a wealth of information available about jobs existing in the national economy, making live testimony on such information unnecessary. The Secretary carries his burden of proof by supporting with substantial evidence findings that claimant meets each criterion in a particular rule in Appendix 2.

Accordingly, it is ORDERED that the Secretary's decision in this case be, and the same hereby is, affirmed.

Order Accordingly.

00102.105 Transferability of Work Skills

82-41

(Previously Published as PPS-67)

TITLES II AND XVI: WORK SKILLS AND THEIR TRANSFERABILITY AS INTENDED BY THE EXPANDED VOCATIONAL FACTORS REGULATIONS EFFECTIVE FEBRUARY 26, 1979

PURPOSE: To further explain the concepts of "skills" and "transferability of skills" and to clarify how these concepts are used in disability evaluation.

CITATIONS (AUTHORITY): Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act; Regulations No. 4, sections 404.1520(f), 404.1545, 404.1561, 404.1563, 404.1565, 404.1566 and 404.1568; Regulations No. 16, sections 416.920(f), 416.945, 416.961, 416.963, 416.965, 416.966 and 416.968; and Appendix 2, Subpart P of Regulations No. 4, sections 200.00(b), 201.00(e), 201.00(f), 202.00(e) and 202.00(f).

PERTINENT HISTORY: The law states that, to be found disabled, a worker must have a medically determinable physical or mental impairment(s) of such severity that he or she is not only unable to do previous work but cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy. Skills and their transferability relate to "work experience" in the definition of disability and to people's abilities to do occupations different from those they did before becoming impaired.

Claims which require consideration of an applicant's ability to adjust to other work are addressed in the last step of the sequential evaluation process as it is explained in the regulations.

In February 1979, the regulations were amended to consolidate all policies for adjudicating disability claims in which an individual's vocational factors; i.e., age, education and work experience, must be considered in addition to the medical condition. At that time, the medical-vocational guidelines were introduced as Appendix 2 into the regulations and became binding at all levels of adjudication and appeal.
There have been some misinterpretations and misapplications of the regulations relating to determining the skill levels of jobs and whether or not skills are transferable. In addition, there is a need to clarify the definition of semiskilled work (especially in relation to unskilled work) and to more fully explain how work skills are acquired and what jobs they may be transferable to under the regulations. There also appears to be some confusion regarding the nature of the evidence necessary to support findings as to skill levels and transferability.

Policy statements on these issues will enable all components of the Social Security Administration to better understand and apply the provisions of the regulations properly and consistently.

POLICY STATEMENT: The topics discussed below expand upon the disability regulations.

1. *When transferability of work skills is at issue.* Transferability of skills is an issue only when an individual's impairment(s), though severe, does not meet or equal the criteria in the Listing of Impairments in Appendix 1 of the regulations but does prevent the performance of past relevant work (PRW), and that work has been determined to be skilled or semiskilled. (PRW is defined in regulations sections 404.1565 and 416.965.) When the table rules in Appendix 2 are applicable to a case, transferability will be decisive in the conclusion of "disabled" or "not disabled" in only a relatively few instances because, even if it is determined that there are no transferable skills, a finding of "not disabled" may be based on the ability to do unskilled work.

2. *Skills, skill levels, and their potential for being transferred to other occupations.*

   a. *What a "skill" is.* A skill is knowledge of a work activity which requires the exercise of significant judgment that goes beyond the carrying out of simple job duties and is acquired through performance of an occupation which is above the unskilled level (requires more than 30 days to learn). It is practical and familiar knowledge of the principles and processes of an art, science or trade, combined with the ability to apply them in practice in a proper and approved manner. This includes activities like making precise measurements, reading blueprints, and setting up and

operating complex machinery. A skill gives a person a special advantage over unskilled workers in the labor market.

Skills are not gained by doing unskilled jobs, and a person has no special advantage if he or she is skilled or semiskilled but can qualify only for an unskilled job because his or her skills cannot be used to any significant degree in other jobs. The table rules in Appendix 2 are consistent with the provisions regarding skills because the same conclusion is directed for individuals with an unskilled work background and for those with a skilled or semiskilled work background whose skills are not transferable. A person's acquired work skills may or may not be commensurate with his or her formal educational attainment.

b. *What "transferability" is.* Transferability means applying work skills which a person has demonstrated in vocationally relevant past jobs to meet the requirements of other skilled or semiskilled jobs. Transferability is distinct from the usage of skills recently learned in school which may serve as a basis for direct entry into skilled work (Appendix 2, section 201.00(g)).

c. *Determination that a job is unskilled.* Unskilled occupations are the least complex types of work. Jobs are unskilled when persons can usually learn to do them in 30 days or less. The majority of unskilled jobs are identified in the Department of Labor's *Dictionary of Occupational Titles* (DOT). It should be obvious that restaurant dishwashers are unskilled. It may not be self-evident that other jobs can be learned in 30 days or less, such as sparkplug assembler, school-crossing guard and carpenter's or baker's helper (laborers). In these cases, occupational reference materials or specialists should be consulted. (State agencies may use vocational consultants, specialists or vocational evaluation workshops to assist in resolving complex vocational issues; and vocational experts may be consulted for this purpose at the hearing and appeals levels. In this Program Policy Statement, the term vocational specialist (VS) describes all vocational resource personnel.)

d. *Determination that a job is semiskilled and whether skills are transferable to other jobs.* Semiskilled occupations are more complex than unskilled work and distinctly simpler than the more highly skilled types of jobs. They contain more variables and require more judgment than do unskilled occupations. Even though semiskilled occupations require more than 30 days to learn, the content of work activities in some semiskilled jobs may be little more than unskilled. Therefore, close attention must be paid to the ac-

tual complexities of the job in dealing with data, people, or objects and to the judgments required to do the work.

The regulations definition of semiskilled work in regulations sections 404.1568(b) and 416.968(b) states that semiskilled jobs "may require alertness and close attention . . . coordination and dexterity . . . as when hands or feet must be moved quickly to do repetitive tasks." These descriptive terms are not intended, however, to illustrate types of skills, in and of themselves. The terms describe worker traits (aptitudes or abilities) rather than acquired work skills.

Skills refer to experience and demonstrated proficiency with work activities in particular tasks or jobs. In evaluating the skill level of PRW or potential occupations, work activities are the determining factors.

Worker traits to be relevant must have been used in connection with a work activity. Thus, in the regulations, the trait of alertness is connected with the work activities of close attention to watching machine processes, inspecting, testing, tending or guarding; and the traits of coordination and dexterity with the use of hands or feet for the rapid performance of repetitive work tasks. It is the acquired capacity to perform the work activities with facility (rather than the traits themselves) that gives rise to potentially transferable skills.

At the lower level of semiskilled work (next to unskilled) are jobs like those of a chauffeur and some sewing-machine operators. Also at the lower level of semiskilled work would be such jobs as room service waiter, in which the worker serves meals to guests in their rooms, taking silverware, linen, plates and food on a tray or cart and then removing the equipment from rooms after guests have eaten. Transferability of skills is not usually found from this rather simple type of work. When job activities are at this minimal level of skill, an adjudicator or administrative law judge (ALJ) can often, without assistance, make the determination that the worker has very little vocational advantage over an unskilled person and does not have transferable skills.

Slightly more complex, *at a higher level of semiskilled work*, are jobs like that of a nurse aide, who may also serve food to people. A nurse aide ordinarily performs other tasks which do not provide a special advantage over unskilled workers, such as dusting and cleaning rooms, changing bed linens, and bathing, dressing and undressing patients. The only duties which suggest transferable skills are those related to "nurse" rather than "aide"—taking

and recording the rates of temperature, pulse and respiration; and recording food and liquid intake and output. However, these occasional or incidental parts of the overall nurse aide job, which are a small part of a higher skilled job (nurse), would not ordinarily give a meaningful vocational advantage over unskilled work. The extent of such duties, however, may vary with individual nurse aides.

On the other hand, a semiskilled general office clerk (administrative clerk), doing light work, ordinarily is equally proficient in, and spends considerable time doing, typing, filing, tabulating and posting data in record books, preparing invoices and statements, operating adding and calculating machines, etc. These clerical skills may be readily transferable to such semiskilled sedentary occupations as typist, clerk-typist and insurance auditing control clerk.

e. *Determination that a job is skilled and whether skills are transferable to other jobs.* Skilled occupations are more complex and varied than unskilled and semiskilled occupations. They require more training time and often a higher educational attainment. Abstract thinking in specialized fields may be required, as for chemists and architects. Special artistic talents and mastery of a musical instrument may be involved, as for school band instructors. Practical knowledge of machinery and understanding of charts and technical manuals may be needed by an automobile mechanic. The president or chief executive officer of a business organization may need exceptional ability to deal with people, organize various data, and make difficult decisions in several areas of knowledge.

At a lower level of skilled work are jobs like bulldozer operator, firebrick layer, and hosiery knitting machine operator. Where the skills in (and transferability of skills from) jobs like these are at issue, occupational reference sources or a VS should be consulted as necessary.

At the upper end of skilled work are jobs like architect, aircraft stress analyst, air-conditioning mechanic, and various professional and executive or managerial occupations. People with highly skilled work backgrounds have a much greater potential for transferability of their skills because *potential* jobs in which they can use their skills encompass occupations at the same and lower skill levels, through semiskilled occupations. Usually the higher the skill level, the more the potential for transferring skills increases. Consultation with a VS may be necessary to ascertain whether and how these skills are transferable.

3. *Documentation of skills and skill levels.*

   a. *Sources of job information.* A particular job may or may not be identifiable in authoritative reference materials. The claimant is in the best position to describe just what he or she did in PRW, how it was done, what exertion was involved, what skilled or semiskilled work activities were involved, etc. Neither an occupational title by itself nor a skeleton description is sufficient. If the claimant is unable to describe PRW adequately, the employer, a coworker or a member of the family may be able to do so.

   Skills, levels of skills and potential occupations to which skills from PRW may be transferred are for the adjudicator or ALJ to determine (with the assistance, when required, of a VS or occupational reference sources).

   b. *Determination of skill levels of past work.* In many cases, the skill level of PRW will be apparent simply by comparing job duties with the regulatory definitions of skill levels. This is especially true with most unskilled and most highly skilled work. Job titles, in themselves, are not determinative of skill level. Where it is not apparent, the adjudicator or ALJ should consult vocational reference sources; e.g., the DOT and its supplements. A VS is sometimes required to assist the adjudicator or ALJ in determining the skill level of past work.

4. *Application of the concept of transferability.*

   a. *How transferability is determined in general.* Where transferability is at issue, it is most probable and meaningful among jobs in which: (1) the same or a lesser degree of skill is required, because people are not expected to do more complex jobs than they have actually performed (i.e., from a skilled to a semiskilled or another skilled job, or from one semiskilled to another semiskilled job); (2) the same or similar tools and machines are used; and (3) the same or similar raw materials, products, processes or services are involved. A complete similarity of all these factors is not necessary. There are degrees of transferability ranging from very close similarities to remote and incidental similarities among jobs.

   Generally, the greater the degree of acquired work skills, the less difficulty an individual will experience in transferring skills to other jobs except when the skills are such that they are not readily usable in other industries, jobs and work settings. Reduced residual functional capacity (RFC) and advancing age are important factors associated with transferability because reduced RFC limits the number of jobs within an individual's physical or mental capacity to

perform, and advancing age decreases the possibility of making a successful vocational adjustment.

b. *Medical factors and transferability.* All functional limitations included in the RFC (exertional and nonexertional) must be considered in determining transferability. For example, exertional limitations may prevent a claimant from operating the machinery or using the tools associated with the primary work activities of his or her PRW. Similarly, environmental, manipulative, postural, or mental limitations may prevent a claimant from performing semiskilled or skilled work activites essential to a job. Examples are watchmakers with hand tremors, house painters with severe allergic reactions to paint fumes, craftsmen who have lost eye-hand coordination, construction machine operators whose back impairments will not permit jolting, and business executives who suffer brain damage which notably lowers their IQ's. These factors as well as the general capacity to perform a broad category of work (e.g., sedentary, light or medium) must be considered in assessing whether or not a claimant has transferable work skills. If an impairment(s) does not permit acquired skills to be used, the issue of transferability of skills can be easily resolved.

c. *Special provisions made for transferability.* To find that an individual who is age 55 or over and is limited to sedentary work exertion has skills transferable to sedentary occupations, there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings or the industry. The same is true for individuals who are age 60 and older and are limited to light work exertion. Individuals with these adverse vocational profiles cannot be expected to make a vocational adjustment to substantial changes in work simply because skilled or semiskilled jobs can be identified which have some degree of skill similarity with their PRW. In order to establish transferability of skills for such individuals, the semiskilled or skilled job duties of their past work must be so closely related to other jobs which they can perform that they could be expected to perform these other identified jobs at a high degree of proficiency with a minimal amount of job orientation.

Generally, where job skills are unique to a specific work process in a particular industry or work setting, e.g., carpenter in the construction industry, skills will not be found to be transferable without the need for more than a minimal vocational adjustment by way of tools, work processes, work settings, or industry. On the other hand, where job skills have universal applicability across industry lines, e.g., clerical, professional, administrative, or managerial types of jobs, transferability of skills to industries differing

from past work experience can usually be accomplished with very little, if any, vocational adjustment where jobs with similar skills can be identified as being within an individual's RFC.

The "Example of a hypothetical case analysis" (item 5) below illustrates a situation where carpentry skills could be considered transferable to light work for an individual of advanced age but not transferable for an individual approaching retirement age because the potential jobs identified would require more than "very little" by way of a vocational adjustment.

The regulations also provide that when skills are so specialized or have been acquired in such an isolated vocational setting (like many jobs in mining, agriculture or fishing) that they are not readily usable in other industries, jobs, and work settings, they will be considered not transferable. An adjudicator should recognize that transferability of skills is not likely for persons whose past work is unusual or isolated. Some examples are placer miners, beekeepers, or spear fishermen. However, VS assistance may be required for less obviously unusual occupations in isolated vocational settings.

5. *Example of a hypothetical case analysis.* A disability applicant worked as a carpenter in the construction industry. As described by the claimant, his job was medium work in terms of the exertional level and skilled work in terms of job complexity. The skilled work functions performed by the claimant in his carpentry job included the study of blueprints, sketches or building plans for information needed in constructing, erecting, installing and repairing structures and fixtures of wood, plywood and wallboard, using saws, planes and other handtools and power tools.

The applicant was found to be unable to do his PRW because of a cardiovascular impairment with an RFC which prevents medium exertion. There are no other impairments which might cause additional functional limitations and interfere with the transferability of his carpentry skills.

A decisionmaker in a State agency or in the Office of Hearings and Appeals finds that the former carpenter now has the RFC for at least a full range of light work exertion and that he is age 57, not yet close to retirement age (the age group 60-64 as defined in the regulations). The adjudicator as the finder of fact or the VS as the provider of evidence may be unable to identify closely related light occupations, preferably in the construction industry.

If unable to do so, he or she would then do further research. The

research might show that there are several semiskilled light job possibilities in various worker trait groups and industries. For example, cabinet assembler and hand shaper are "manipulating" occupations in the furniture industry. Rip and groove machine operator is an "operating-controlling" occupation in the furniture industry. Box repairer in the wooden box industry and grader in the woodworking industry are two "sorting, inspecting, measuring and related work" occupations. All of these involve tools, raw materials and activities similar to those of the past carpentry work. The adjudicator alone or with the assistance of a VS is able to establish that the potential occupations exist in significant numbers in the national economy.

If the decisionmaker were to find that the carpenter has the RFC for a full range of light work exertion but (to change one fact in the example) is closely approaching retirement age, the provision in section 202.00(f) of Appendix 2 requiring little, if any, vocational adjustment would apply. Under the circumstances the VS could state, and the decisionmaker could find, that the claimant's carpentry skills cannot be transferred with very little, if any, vocational adjustment required in terms of tools, work processes, work settings or the industry.

Should the decisionmaker find that the former carpenter, at any age, is now limited to sedentary work exertion, he or she would most likely find few occupations performed in the seated position which utilize the specific work skills learned and used in construction carpentry and may be unable to find transferability.

6. *Findings of fact in determinations or decisions involving transferability of skills.* When the issue of skills and their transferability must be decided, the adjudicator or ALJ is required to make certain findings of fact and include them in the written decision. Findings should be supported with appropriate documentation.

When a finding is made that a claimant has transferable skills, the acquired work skills must be identified, and specific occupations to which the acquired work skills are transferable must be cited in the State agency's determination or ALJ's decision. Evidence that these specific skilled or semiskilled jobs exist in significant numbers in the national economy should be included (the regulations take administrative notice only of the existence of unskilled sedentary, light, and medium jobs in the national economy). This evidence may be VS statements based on expert personal knowledge or substantiation by information contained in the publications listed in regulations sections 404.1566(d) and 416.966(d). It is important that these findings be made at all levels of adjudication to clearly establish the basis for the determination or decision for the claimant and for a reviewing body including a Federal district court.

EFFECTIVE DATE: Final regulations expanding the vocational factors regulations were published in the *Federal Register* on November 28, 1978, at 43 FR 55349, effective February 26, 1979. They were rewritten to make them easier to understand and were published on August 20, 1980, at 45 FR 55566. The policies in this PPS also became effective on February 26, 1979.

CROSS-REFERENCES: Program Operations Manual System, Part 4 (Disability Insurance State Manual Procedures) sections DI 2093, 2105.D, 2380.E, 2382, 2384, 2387.B.4 and 5, 2388.B and C, 2389, 2390, 2863 and 3027.C.2.

Mr. SHANNON. Thank you, Commissioner. Perhaps I should take this opportunity to, first of all, thank you for your splendid work in this program, testifying in Washington and helping us put the legislation together in the early stages. You and your staff were very, very helpful in that and I am confident that we're going to able to get the legislation through.

Perhaps I could give a brief status report as to where we are with the legislation, and what I expect to have happen. The Ways and Means Committee caucused yesterday and it is the hope of the committee chairman that the legislation will be taken back in the committee next week. The disability portions will not be touched, they'll be left alone but the revenue package will be adjusted somewhat. And then it is our hope that the revenue package will come to the floor of the House containing the disability provisions the week after next.

And it's our hope that we'll be able to pass that legislation. If, in fact, we can't pass the legislation then we'll have to make other arrangements with the disability bill. But we do have the full commitment of the leadership of the committee and the leadership of the House of Representatives that that bill will be coming before the House within a short period of time.

And I'm confident we'll be able to get it over to the Senate and I hope that we'll be able to get it through the Senate without too much delay. I think it's going to be important for all of us to keep the pressure on over there. But I think we have a very good chance of getting some good legislation to the President's desk.

Now it's up in the air, I suppose, as to whether or not the President is going to sign that legislation. He's made it clear that he's opposed to it. He sent the Secretary of Health and Human Services to testify against it. He sent the Commissioner of Social Security to testify against it. Has he sent any representatives here today yet to come and tell us his position on it today?

It's unfortunate, the last time I testified here before the Special Commissioner of Social Security he did have a representative in the room who didn't identify himself to the commission at that time and it's unfortunate that they're unwilling to come here and state what their objections are to this legislation. But it doesn't make any difference because whether they're for it or against it we're going to get it to his desk and then he can make that decision.

Commissioner, let me ask you, does the bill, as it is presently written, address the major problems that you see with the disability program and will it be administrable by the State? Will the program, after the bill is passed, be more easily administrable by the State as you see it?

Mr. BARTELS. Very definitely. I think the features that are in the Pickle/Shannon bill do meet the needs of the program, do meet the needs of those of us that have to administer the program. We have worked very closely with your office and particularly with Dan Adams. I would like to, again, publicly recognize his hard work on the program at the staff level to pick out the important features and make sure they do get reflected in law. We feel very positive about what we see in the House bill.

Mr. SHANNON. What about sanctions, if the administration were to come in and say, OK, we're going to federalize the program, we're going to take financial sanctions against the State as they have threatened to do, what would happen to the disability program in Massachusetts?

Mr. BARTELS. Well, I think it's another example of causing the program to be in disarray around the country. Massachusetts would be one of many States where such actions would be taken. I think it's very important that Congress move ahead for all its worth to help assure that such a disruption in the program doesn't take place.

Mr. SHANNON. Well, Commissioner, I want to thank you once again for your testimony and for your assistance throughout this process. We hope that we're going to be able to get this into law. I don't think that this kind of legislation really would have been possible if it hadn't been for all of the support we got from you and from people in Massachusetts who've been involved in trying to help us address the problem. It's been a long fight now and it's a frustrating process we have to go through to get this legislation.

I was very disappointed that we didn't get the bill through the House in the last session of the Congress. But I have to say I'm very optimistic that we're going to get it through the House very shortly and get it over to the Senate. I hope that the next time that we're together in the State House we will be celebrating the fact that that legislation has become the law.

Mr. BARTELS. I think it's been very frustrating for all of us—individuals who are on disability, the disability advocates in Massachusetts and for those of us that have to administer a program that many times doesn't make any sense. It has been very difficult for all of us.

Mr. SHANNON. Thank you very much, Commissioner. The next panel will be Judith Saltzman, who is senior attorney for health and disability to the Greater Boston Legal Services, Damian Ivanof, who is the chairman of the Stop Abuse of the Disabled, Arlene Potvin of Fall River who will also be on this panel.

Welcome to you all.

Maybe we'll hear from Ms. Potvin first if that's OK.

STATEMENT OF ARLENE M. POTVIN, FALL RIVER, MA

Ms. POTVIN. OK; I don't know if it has to be corrected. My name is Arlene, A-r-l-e-n-e.

Mr. SHANNON. Oh, I'm sorry.

Ms. POTVIN. I didn't know if it needed correcting.

I've been getting quite a bit of abuse of the system and I wrote it down so that you can each have a copy of Mr. Ivanof for later and I'll try to summarize the best I can.

In 1980 I had been feeling sick for maybe about a year by then. I found I had a bone and muscle problem that made me easily tire out. A lot of back pain and leg pain. It got very severe to where I could no longer work.

I applied for disability benefits then. Till today I have not a red cent. Nothing.

Mr. SHANNON. Were you working then, Ms. Potvin?

Ms. POTVIN. At—when I had first applied, no. I had already left work. I couldn't work anymore.

Mr. SHANNON. And what had you done? What kind of work had you done prior to that time?

Ms. POTVIN. I was an office superintendent for City Directory Office.

From that time to now I've been in the hospital approximately 14 times for back traction, pelvic traction, and bed rest. I have a degeneration in the lower spine.

I had to keep sending papers to the disability office as they became available for my doctors with the new diagnoses and x rays and whatnot.

I was turned down repeatedly no matter whether it was for reconsideration or what. I was always turned down.

Mr. SHANNON. Maybe you could explain to us very briefly the process you had to go through in order to apply and——

Ms. POTVIN. OK; when I first applied it was immediately turned down. They said there was not enough medical evidence.

Mr. SHANNON. What did you produce? Did you have a doctor's——

Ms. POTVIN. Yes; doctor's papers. They said it was not enough medical evidence.

Mr. SHANNON. Well, what did the doctor say about you?

Ms. POTVIN. That I was disabled because of body aching and muscle pain. They didn't know the bottom line.

It has become apparent this last year that I have multiple sclerosis. I have epilepsy. Besides the arthritis and the degeneration in my spine, I use a T.E.N.S. unit which is wired up to my back now and I wear a battery pack to control how much of the electrodes I will need to stop the pain. And it does help.

Mr. SHANNON. So you have such severe pain that you have to have something block that pain.

Ms. POTVIN. Yes.

Mr. SHANNON. And you applied for disability benefits and had doctor statements that you were unable to work.

Ms. POTVIN. Exactly.

Mr. SHANNON. And you were denied?

Ms. POTVIN. Right.

Mr. SHANNON. So then what did you do?

Ms. POTVIN. I reapplied for reconsideration. That was turned down.

Mr. SHANNON. Did you have a lawyer at that time?

Ms. POTVIN. Absolute chaos. The first one I had was—had to be called away for some jury deliberations and couldn't go with me. So that night I had to get another lawyer who went with me.

That was when at the time that I first went to a judge. It was December 2, 1981, in Providence, RI.

He said he needed more evidence and he was going to give me a psychological/psychiatric test.

Mr. SHANNON. Let me ask you a question if I can, Ms. Potvin. Did you have to pay the lawyer?

Ms. POTVIN. Now I'm on my third lawyer. The second one turned out to be a disaster, tied up my case in civil court for a year and it never got heard.

So the Disability Development Law have now assigned me an attorney with what they would pay which I wouldn't have to pay because the financial aspects come so overburdening that every cent is going to go to—if they decide to give it—would go to pay all these back bills.

Mr. SHANNON. This is the problem that I think a lot of people have.

A lot of disabled people can't go out and afford to hire James St. Clair to represent them in these cases.

Ms. POTVIN. So I had to do with whatever I could and it's bombed out twice. I am now on one of their attorneys. I do an awful lot myself.

I have called Barney Frank's office since before he was even a Congressman, he was still running for Congress. He even took my files with him to Washington to work on it. To no avail, he has worked on it but it still hasn't gone through.

Mr. SHANNON. So you filed for reconsideration. Did you get a notice in the mail saying you were denied again——

Ms. POTVIN. So then——

Mr. SHANNON [continuing]. Which happens in most cases; 85 percent of the cases of reconsideration doesn't amount to anything.

Ms. POTVIN. The attorney then said you've got to sue Civil Service. I knew nothing of this.

I went to an attorney and the attorney said I can't handle that, you're going to have to go to somebody with experience and that, which I did.

It got tied up in this civil suit and never got heard. Ever.

Mr. SHANNON. This is the administrative law judge level or——

Ms. POTVIN. They call it civil suit before a judge. That's all I know how they call it, civil suit.

Mr. SHANNON. Did you go before an administrative judge?

Ms. POTVIN. I never got there.

Mr. SHANNON. You never got there?

Ms. POTVIN. The only administrative law judge I saw was in December 1981 when they sent the psychiatrist to examine me, took 2½ hours and he said, yes, she is totally 100 percent disabled. I have a copy of everything. And the judge still denied it. Not enough evidence.

Since then they found the MS. Since then the seizures went crazy. My doctor, Dr. Eugene Tompkins, has documented it and a phone call—from Damian Ivanof—he said the only way that he could satisfy them is to perform an autopsy and give them my brain. Because they weren't satisfied with anything.

Mr. SHANNON. What kind of seizures do you have?

Ms. POTVIN. I get very dizzy, pass out and I'll be extremely dizzy for maybe a week after that. I was getting one a week also.

Mr. SHANNON. Does this come on all of a sudden?

Ms. POTVIN. Yes; I have had it since I was maybe a teenager and then it went into remission, and then it came back, went into remission, I haven't had it for maybe 10 years.

This past year they said it was because of all this garbage that the disability program put me through. It aggravated them and they couldn't stop it.

Mr. SHANNON. How long have you been in a wheelchair?

Ms. POTVIN. I—it's almost a year now. I can walk. I use Canadian crutches. But had I tried to do that to get here I wouldn't have been able to get halfway up the stairs or anything else because then the exhaustion takes over and I'm ruined.

Mr. SHANNON. And what kind of work were you supposed to be able to do? Did they ever tell you?

Ms. POTVIN. No; they just said I don't have enough proof.

I did talk to that legal assistance corporation with Barney Frank's office, Jim Gorman's office who helped quite a bit. I even had a seizure in the disability office.

I got so upset last June while I was there that I had a seizure and they had to take me to the hospital. They said don't come back here anymore. We cannot be responsible for you in this office. If you need anybody, we'll send somebody to your house.

Mr. SHANNON. You mean, you're not well enough to be in the office to apply for benefits——

Ms. POTVIN. Exactly.

Mr. SHANNON [continuing]. But you're well enough to work, is that what they said?

Ms. POTVIN. Yes; I also am not good enough—I mean, I'm not sick enough to get Mass Rehab. I went to Mass Rehab. Someone told me could maybe help me with my medical bills and I got growths behind my eyes that I was going to the doctor for. And they said well if you go to Mass Rehab they possibly could help you with all this. So I did.

I went last January and from then on they sent me to every kind of a doctor you could think of and told me you are too disabled to work. You are being disqualified. I got the letter last November.

He says we just can't help you. But, yet I can't get my disability. It's supposed to be Mass Rehab who helps to determine disability. They said I can't be helped. I'm too disabled. I can't go to work.

Why can't I get my disability? It seems like a double standard. It seems like the devil's advocate, Heckler, is sitting on it and I can get nowhere. I called the Multiple Sclerosis Society in Washington, the Human Services in Washington, everybody says well, we'll look into it and we'll try to help.

The only kind of help I got was last week when someone told me to call Damian Ivanof from SAD. That's the only one who got me any answers.

When I called before they told me for a whole month and a half they couldn't even find my case.

Mr. SHANNON. Where's your case now?

Ms. POTVIN. Now, I believe it's been brought back to Boston to be worked on.

Mr. IVANOF. The case is at DDS now. She has been approved. Will be approved.

Ms. POTVIN. I will be approved? It's been taken care of?

Mr. SHANNON. To this point you haven't got any checks, correct?

Ms. POTVIN. Nope. No letters. No checks. Nobody calling me to tell me anything. Damian is the only break I've gotten since 1980.

Mr. SHANNON. Now how are you eating?

Ms. POTVIN. Salvation Army. You have to beg for food. I'm not eligible for the State——

Mr. SHANNON. Do you live alone?

Ms. POTVIN. No. My husband and two kids' congregation bring you food, come over and help you out any way they can, my parents, and that's how you eat.

My house was foreclosed on not once, twice. I paid $15,000 for my house 16 years ago. The mortgage is now $32,000. Which is ridiculous.

Mr. SHANNON. Are you still living in that house?

Ms. POTVIN. Yes; everything is set up for me. I hate to just go anywhere else. If my house is set up for me the electric bed and traction cost will——

Mr. SHANNON. What happens if you lose it? Are you going to lose it?

Ms. POTVIN. They just rewrote it yesterday. I was there yesterday to rewrite it for 6 more months and prepare it until my disability comes through.

They have degraded us and we have a 1971 vehicle that is so bad, it's horrendous. My husband works on it almost weekly. He has to drive every other day to Boston to his job.

He got scalded severely working on it the day after I got out of the hospital in November. He had to be rushed into the hospital. And that's what he has to drive because who's going to give you a car?

Mr. SHANNON. Arlene, have you run into any doctors throughout this whole process who told you you were able to work?

Ms. POTVIN. The disability doctors that they sent me to 3 years ago, yes.

Mr. SHANNON. How about other doctors that you saw in the hospital or since that time or anybody?

Ms. POTVIN. No. I've been in—I went to Mass, no, Brigham and Women's Hospital for a year and a half to the chronic pain unit where Dr. Leif administered spinal epidural.

On some people they work. They can get one every 6 months. I have to go once a month for spinal epidurals and triggers. It's been this chronic pain right from the beginning. And disability just hasn't approved it.

Mr. SHANNON. Thank you very much for your testimony, Arlene.

Ms. POTVIN. Thank you.

[The prepared statement follows:]

STATEMENT OF ARLENE M. POTVIN, FALL RIVER, MA

In 1980 I had been feeling sick for about a year. I had bone and muscle pain all over my body and tired out easily. When the back and leg pains became severe I could no longer work. I applied for disability benefits. At the same time I was admitted to the hospital for the 3rd time in a 1 year period. I was put in pelvic traction for 1 week then released with restrictions. Shortly after I was denied my benefits for the 1st time. I applied for reconsideration and was denied again. All the evidence was sent in as soon as the doctors could. I then went before a judge on Dec. 2, 1981. He said he needed a MMPI test from a psychiatric neurologist—Dr. Goodenough. He came to my home for the 2½ hour test (I have a copy of his report.) And said I was physically totally disabled. The judge was given this report but he decided it wasn't enough proof and denied my benefits again. I appealed his decision and was denied again. All this time I was in the hospital at least 4 more times for pelvic taction and bed rest. The doctors also tried whirlpool therapy which really made me worse. This was the 1st effects they saw of Multiple Sclerosis. I was quite dizzy on and off but did not pass out at this time. I was told it might be a seizure disorder or vertigo problems. At this time I contacted Congressman Barney Frank's office and was immediately helped by Amelia Wright. She directed me to the Southeastern

Legal Assistance Corp. asst. Judy Bevin in New Bedford and also many city agencies which later on provided us with food and coal to heat our home. Our boiler also broke at this time so coal and wood were now needed. The Congressman's office set up a legal appointment for me in New Bedford and thru their effort I was able to receive free legal help. Gov. Dukakis office was also contacted to look into my disability claim as a hardship clause.

It was 1982 now our mortgage had been foreclosed and we were faced with no food-heat-now no home. My lawyer spoke to the bank and told them my claim was in for benefits and they re-wrote the mortgage and prepaid it for 1 year. Well 1 year came and went and still no benefits. My old lawyers had filed it into civil suit action and it got tied up for 1 year and never got a hearing. For the next 1½ years I went to Brigham and Women's Hospital Chronic Pain Unit to Dr. Leif for Spinal Epidural and trigger injections to be able to live with the pain, and also use a T.E.N.S. unit wired daily to my back for pain beside medication. At this time I had to get a Hospital bed and traction unit at home to use up to 4 hours daily to lengthen the times between hospital stays. Then the pains in my legs turned out to be tumors on my both shins. One was removed last April. It was benign so I was told to leave the others alone. Then the seizures started up again. In June 1983 I went to the disability office with new medical papers and I had a seizure there. Ms. Greese and 2 other people brought me to Union Hospital. Even with all the above, the disability office still says they need more proof. In June of 1983 I lost the use of my left side—my speech was slurred and faint. Urinary and bowels were hard to control. It seemed like I was going out of my mind. I went to a medical Doctor who is also a neurologist, Dr. Thompkins, who told me I had Multiple Sclerosis besides my epilepsy and myo-fibrositis of muscles and bones. I had had it. I wanted to commit suicide. My family had help me so much but were at the breaking point too. Our phone rang all the time with collectors. I hated to get the mail. My husband was ill all of August because of a nervous stomach and almost lost his job. I could not breath with the heat—the M.S. Society purchased an air-conditioner for me. At this time I still am getting bills from the disability system and Mass. Rehab. They disqualified me last Nov. and said they could not rehabilitate me for work so they would not help me. Our food came from Salvation Army several times this past year and the Lions Club. Friends have given us food and wood to feed and heat us. I feel the disability system has reduce me to crawling and begging for what I need. My family and I will never be the same. The only breakthrough came last week when I called Damian Ivanof at S.A.D. I really hope this can Stop the Abuse to the Disabled.

Mr. SHANNON. We'll do what we can to get this legislation through.

Damian, do you want to refute it?

STATEMENT OF DAMIAN T. IVANOF, CHAIRMAN, STOP ABUSE OF THE DISABLED, TEWKSBURY, MA

Mr. IVANOF. Congressman, Mr. Chairman, and members of the Social Security Subcommittee, I would like to thank you for the opportunity to voice our concerns about the present Social Security disability review process. We also want to commend you, the subcommittee, and the Ways and Means Committee for the excellent disability reform legislation you have proposed. We all most definitely believe the legislation must pass in order to save hundreds of thousands more tragedies across this great Nation.

We fully support the continuing disability review moratorium and medical improvement standard which Governor Dukakis instituted in Massachusetts and we also urge him to put a total moratorium on all cases until the disability program chaos is resolved, either legislatively or legally.

At present because of the Governor's orders, no one is being removed from the CDR rolls. However, if the State is forced into resuming the present Social Security review procedures, the slaughter of persons receiving disability income will begin again, just as is happening to those applying for initial disability claims.

It has become quite clear to us that since 1981 the goal of this review process was not to eliminate the "cheats" as Social Security always states, but to remove vast numbers of truly mentally and physically disabled people from the rolls in an attempt to make the public believe they are saving money, but the human costs are astounding.

In addition to increasing their physical difficulties, emotional and financial problems have been devastating. Many marriages have either been ruined or became quite unstable from tension and concern. We have spent many hours talking to claimants who have been contemplating suicide because they felt they could no longer cope.

Fourteen members of Stop Abuse of the Disabled have died from the very illness they were told was not severe enough. People have expressed their frustration and mistrust of the Social Security Administration and they feel that if they have to go through this process again, it will certainly kill them.

Children of Social Security disability recipients whose benefits were terminated have suffered emotionally and add to problems with dropping grades in school. At least two of our members have lost their homes because of the inability to meet their mortgage payments. Others have been forced on welfare, general relief, veteran services; others left out on the street homeless with no help at all.

All those outcries combined, were the reasons our State was forced to take strong action against the Social Security Administration in order to protect their disabled citizens. Social Security claims they have expanded their listings of permanent impairments and made improvements in their program but they have only made superficial attempts on paper to quiet the public and congressional outcry.

All of the disabled people who testified before me should have been covered under the permanent impairment statute. Muscular dystrophy, multiple sclerosis, and chronic obstructive airway diseases which those people suffer from are on the permanent impairment listings but they were still denied their benefits.

We are constantly speaking with thousands of people who are bringing horror stories to us. For example, a brilliant professor who was struck down with a bacterial meningitis and barely survived, with his mind reduced to that of a 6 year old, was told that because he could ride a tricycle he was no longer disabled.

A person diagnosed as having extensive liver disease was told he was no longer disabled and lost his benefits. One week after his appearance before an administrative law judge, he died of the very same illness he was told was not disabling enough. After his death, his wife received notice that his appeal was approved by the administrative law judge.

One woman, suffering from a degenerative bone disease which left the nerve endings in her spinal column exposed, requiring a body cast and in constant pain, had her benefits terminated as well.

A man suffering cardiac disability was told he had to submit to a treadmill test or stress test or lose his benefits even though it was contrary to his private physican's wishes. He suffered chest pains

during the testing and the test had to be terminated prematurely. His chest pain continued all week; he was rushed to the hospital suffering a heart attack and required triple by-pass surgery.

These are but a few of the thousands of horror stories in our State. The subtle pressure to deny disability benefits put on both the disability determination services and the administrative law judges is a national disgrace. This is why we are asking Congress to ensure that the ALJ's remain in the appeals process but totally independent from Social Security.

The Secretary of Health and Human Services, Margaret Heckler, has been ordered by many district and circuit courts to obey their decisions and reinstate people whose benefits were illegally terminated but this administrstion continually says they will not comply or appeal to the Supreme Court.

If any of the disabled population were to break the law, we would be immediately prosecuted. Why then are our public leaders not being prosecuted for breaking the law?

Mr. Chairman, all these reasons combined, are why the comprehensive disability reform bill must be speedily passed. It is the only measure which will ensure that the injustices, frustration, financial and emotional disaster, and deaths perpetrated on the disabled by this administration will end.

[Attachments to the prepared statement follow:]

PERMANENT IMPAIRMENTS (CHART A)

	Listing	Code
1. Arthritis in one major joint in each upper extremity	(1.04)	024
2. Disorders of the spine (arthritis manifested by ankylosis or fixation at 30 degrees or more)	(1.05A)	025
3. Amputation or permanent loss of use of two limbs	(1.09)	628
4. Amputation of leg at hip	(1.10A)	629
5. Amputation of leg or foot because of diabetes or peripheral vascular disease	(1.10B)	630
6. Statutory blindness, except if due to cataracts or detached retina—markedly reduced ability to see objects not correctable by surgery, other treatment, or glasses	(2.022)	632
	(2.03)	633
7. Loss of visual efficiency (visual efficiency of better eye after best correction 20 percent or less)	(2.04)	026
8. Hearing impairments (hearing not restorable by a hearing aid)	(2.08A)	631
	(2.08B)	027
9. Chronic obstructive airway disease	(3.02)	028
10. Ischemic heart disease with chest pain of cardiac origin	(4.04A/B)	029
11. Arteriosclerosis obliterans or thromboangiitis	(4.13)	030
12. Chronic liver disease with esophageal varices resulting in massive hemorrhage requiring shunt operation	(5.05A)	641
	(5.05B)	642
13. Impaired renal function due to chronic progressive disease, incurable kidney disease (documented by persistent adverse objective findings) resulting in severely reduced function which may require dialysis or transplant	(6.02)	639
14. Diabetes Mellitus with manifestations as required by the applicable listing	(9.08)	031
15. Central nervous system vascular accident, with manifestations as required by the applicable listing more than 3 months post vascular accident	(11.04)	032
16. Parkinsonian Syndrome, with disturbance of movement, gait, or station as required by the applicable listing	(11.06)	033
17. Cerebral Palsy, with manifestations as required by the applicable listing	(11.07)	034
18. Spinal cord or nerve root lesion resulting in paraplegia or quadriplegia, damage to the spinal cord or major branches resulting in markedly reduced function in two or more extremities	(11.08)	636
19. Multiple Sclerosis, damage to the nervous system due to areas of inflammation which recur and may progress to interference with function of the nervous system, including severe weakness, paralysis	(11.09)	637
20. Amyotrophic Lateral Sclerosis	(11.10)	035
21. Anterior Poliomyelitis, with interference in swallowing, breathing, speech, or motor function as described in the applicable listing	(11.11)	036

PERMANENT IMPAIRMENTS (CHART A)—Continued

	Listing	Code
22. Muscular Dystrophy, a chronic disease causing irreversible wasting of the muscles with a significant effect on the ability to use the arms and/or legs	(11.13)	638
23. Degenerative disease, such as Huntington's Chorea, Friedreich's Ataxia, and Spinocerebellar Degeneration, with manifestations as required by the applicable listing	(11.17)	038
24. Chronic Brain Syndrome (organic brain syndrome) with manifestations as required by the applicable listing	(12.02)	039
25. Functional Psychotic Disorders if institutionalized in a licensed mental hospital for past 12 months without releases that would indicate improvement (See note below regarding cases involving functional psychotic disorders.)	(12.03)	634
26. Functional Nonpsychotic Disorders if institutionalized in a licensed mental hospital for past 12 months without releases that would indicate improvement	(12.04)	643
27. Severe Mental Retardation, with manifestations as required by the applicable listing	(12.05A)	634
	(12.05B)	635
	(12.05C)	040
28. Age 55 and over with the following condition that meets listing		041
(A) Arthritis of major weight bearing joint	(1.03A)	041
(B) Organic loss of speech	(2.09)	041
(C) Diffuse pulmonary fibrosis	(3.04)	041
(D) Other restrictive ventilatory disorders	(3.05)	041
(E) Chronic venous insufficiency	(4.12)	041
(F) Scleroderma or progressive systemic sclerosis	(10.05)	041
(G) Tabes dorsalis	(11.15)	041
(H) Subacute combined cord degeneration	(11.16)	041
(I) Syringomyelia	(11.19)	041
(J) Ischemic heart disease	(4.04C/D)	041
Note.—All impairments listed above are applicable only to cases originally allowed as meeting the listings. The impairments listed below do not have a specific listing equivalent. (CDI concern only)		
29. Amputation of a limb, current age 55 or older		640
30. Age 55 and over with two substantiated myocardial infarctions (POMS) DI 00504.314.C.15, IT 042-83)		019

[Exhibit 1]

Status Report on Disability Studies and Projects

(Prepared by: Office of Disability Programs, Federal/State Programs, December 1981)

To assist you in responding to congressional, legal, and media inquiries in regard to the current CDI effort, I've decided to give you a history of the CDI part of the disability program so you'll understand some of the very subtle changes that have taken place since Disability Insurance was added to the Social Security Act in 1955.

It goes without saying that much of this information is definitely not intended to be made known to the public or the press due to their flair for misunderstanding and slanted reporting, but you are entitled to see the whole picture.

It should be remembered that since the Disability Insurance part of the Act is so relatively new, it is quite normal and understandable that is is still evolving into what we would like it to be. Changing economic and social conditions have impacted harshly upon the disability program, and I think it is a matter of real concern to the government to make the program as dynamic as the times in which we live. The following is a synopsis of the important milestones leading up to the current furor over continuing disability investigations:

(1) In the 1950's and 60's our policy toward CDI's was pretty much that we expected the beneficiary to report to us if he went back to work or had medically recovered. In addition, earnings posted to an earnings record would prompt a CDI.

(2) In those years, diaries for medical re-examination at a later date were scheduled only in clear-cut cases where distinct medical improvement could be expected based on specific criteria in the POMS.

(3) During these years also, DDS's were adjudicating under the assumption that in order to cease a beneficiary's benefits upon CDI, one needed to show real medical

improvement since the onset of disability rather than basing the decision of disabled or not disabled upon the regulations currently in effect.

(4) During these years and into the 70's it was very strongly felt that time and money should not be wasted on unproductive attempts at ceasing benefits. Reviewing units such as the DAB or ODO would assign deficiencies if DDS examiners incorrectly diaried a case for future medical re-exam.

(5) In 1974 we took on SSI and increased the disability and continuing disability workload. Studies have shown that the years 1974-76 are particularly error-prone due probably to haste in adjudication by overworked examiners and confusion over new rules and regulations.

(6) There was an unwritten rule in those days of giving the claimant the benefit of any doubt in close call cases. While this is still true and proper in some cases, the disability guidelines are much clearer now and guesswork and individual judgment is minimized.

(7) The disability "listing of impairments" has changed several times over the last 10-15 years in order to keep pace with medical knowledge and treatment. The rules have become much clearer and stricter since the early days of the program.

(8) There's no question also that there have been significant advances in medical science so that many patients/beneficiaries can be maintained better on sophisticated drugs and medications and, hence, have more of a chance to return to work.

(9) During this whole period of time ALJ's were reversing an alarming number of DDS reconsideration decisions. It quickly became apparent that the two components were using different adjudicative criteria. The DDS's said they were adjudicating under Agency guidelines, and the ALJ's said they were concerned with the Court's requirements of them as ALJ's, and with their knowledge of the claimant gained at the hearings level.

(10) As you know, the review of ALJ cases required by the Bellmon Amendment began October 1, 1981. There are no statistics available on this yet, however the conference call of February 4, 1982 did elicit that a report concerning the report to the Congress on the progress of this review would be forthcoming fairly soon. We will continue to follow this and advise you.

(11) The so-called "vocational regulations" or "grids" were published and became effective in 1979. This was a conscious attempt to eliminate subjective and individual judgment from adjudication, and an attempt, thought to be very successful, in bringing ALJ's closer to Agency guidelines.

(12) For years individual States have used their own internally devised form for recording residual functional capacity. Beginning in 1982 a national RFC form will be in uniform use, binding on all DDS's and reviewing components. There is also a strong possibility that OHA will use the form.

(13) Now, proceeding into the current dilemma concerning CDI's, I think we all remember as CR's getting anonymous phone calls reporting that someone's next door neighbor was getting checks but was working or shoveling snow or playing a lot of golf, etc. There has always been the feeling that there are unqualified people on our disability rolls.

(14) Fairly recent internal studies by SSA such as the CDI Redesign Study, the Non-rollback Conversion Study, the Medical Re-examination Improvement Test and others have indicated that perhaps 18-20% of the people on the rolls were no longer disabled, and a recent GAO report strongly confirmed these findings and urged that our resources be directed in a more cost-efficient way with more stress on Title II cases.

(15) Hence, Congress finally passed the so-called periodic review provision of the 1980 Social Security Amendments which requires review of each disability case on the rolls at least once every 3 years unless the disability is permanent.

(16) While this provision is effective beginning January 1, 1982, the process was accelerated soon after President Reagan took office.

(17) Because of the dwindling trust funds, with only 3 workers supporting each beneficiary, it is interesting to speculate whether this periodic review process would have taken place if the trust funds were very solvent.

(18) In any event, the funds are in deep trouble and the periodic review provision along with the Preeffectuation Review of all allowances are 2 steps being taken to whittle down the rolls.

(19) However, it cannot be said that this whole process is politically motivated because the various laws have been passed by the Congress, elected by the people. As far as I know, there have been no executive orders implicating any Administration. The solvency of the trust funds, and the integrity of the program, are matters of deep concern to everyone.

(20) There are problems which are hampering SSA's efforts to efficiently carry out the periodic review:

(a) Systems modifications are desperately needed in almost all areas of disability including earnings record maintenance, due process notices and termination procedures, and computer selection criteria and coordination between DDP and ODO on profile cases.

(b) The "profiles" themselves are still in refinement process.

(c) Public information and leadership in publicizing the periodic review process has been uneven.

All of these things are being worked on, and, in fact, they are uppermost in the Administration's plans for improving disability programs. I have included a couple of attachments for your information. I will have a further fact sheet available in a short while with the specific information you have requested. I hope this report gives you a perspective on CDI's.

K. Periodic Review (Section 311 of P.L. 96-265).—P.L. 96-265, section 31, effective January 1982, provides for the periodic review of all disabled individuals.

Status: Present plans call for using the results of the 1980-81 CDI Redesign Study to select periodic review cases. To help refine future selections of cases, system modifications have been requested so that diagnosis and diary codes can be recorded for all initial and continuing disability determinations. (Work on reference material requirements and procurement to accomplish this coding is in progress.) Periodic review procedures, including those covering diagnosis and diary coding, are being drafted and should be issued soon for comment. (Caroline Kelly, FTS 934-3481).

REDESIGN OF CONTINUING DISABILITY INVESTIGATION (CDI) SELECTIONS

All outstanding issues concerning redesigned CDI selection criteria have been resolved, and specifications are nearing completion. We plan to implement these changes in July 1982 subsequent to the benefit rate increase (BRI) operations. Benefit amounts are part of the selection formula, and implementation before the BRI would involve a subsequent major file reestablishment. The current selection profiles will continue to be used until the redesigned criteria are in place.

SANDY CRANK.

IMPROVE DISABILITY PROGRAMS

(A) Monitor the cost-effectiveness of preeffectuation review of favorable social security disability decisions. Revise implementation strategy as necessary to assure cost-effectiveness.

(1) Report each quarter's 35 percent review experience.

(2) Implement targeting of reconsideration and CDI cases for FY 1983 in October 1982. In FY 1982, reconsideration allowances will be reviewed at 100 percent, and CDI allowances randomly at 35 percent.

(3) Report on annual experience and cost-effectiveness in November 1983.

(B) Process 567,000 CDI's in FY 1982.

(1) Release targeted cases to the State agencies for action: 47,000—expected to be completed in FY '81; still pending at beginning of FY '82; 90,000 for 1st quarter; 90,000 for 2nd quarter; 90,000 for 3rd quarter; and 90,000 for 4th quarter.

(2) The remaining 160,000 cases are diaried cases which will flow out throughout the year.

(C) Improve the uniformity and quality of the disability determination process at every level. One consequence of greater uniformity and quality will be a reduction in the hearings reversal rate of approximately 4 percentage points by the end of FY 82 and an additional 6 percentage points by the end of FY 83.

(1) Publish final regulations making Program Operations Manual System adjudicatory standards binding by September 1, 1982.

(2) Identify and resolve differences in interpretation of law and regulations by September 30, 1982.

(3) Expand the review of ALJ reversal decisions under Bellmon amendment from current level of 7½ percent to 15 percent by April 30, 1982.

(D) Develop capacity to hear and decide all new cases on a timely basis and to control backlog. Productivity will rise to 40 cases per month per ALJ by end of FY 82, and 45 per month by the end of FY 83, contingent upon obtaining resources outlined in '82 and '83 budget amendment.

(1) Hire approximately 100 ALJs by September 30, 1982.
(2) Increase support staff to ALJ ratio to approximately 5 to 1 by September 30, 1982.
(3) Complete word processing procurement and begin installing equipment by July 1, 1982.
(E) Present, by April 1, 1982, a recommendation for proceeding to develop capacity to assure DDS workload. Include analysis of all options and the basis for nonselection of those options not recommended.

Mr. SHANNON. Thank you very much, Damian. Judith.

STATEMENT OF JUDITH SALTZMAN, SENIOR ATTORNEY FOR HEALTH AND DISABILITY, GREATER BOSTON LEGAL SERVICES

Ms. SALTZMAN. Thank you for asking me to testify here today, Congressman Shannon. I wanted to address or touch upon five main topics: medical improvement, the need to guarantee benefits pending appeal to an administrative law judge, the dangers of the Secretary's proposals for face-to-face hearings at the reconsideration level, the need to insulate administrative law judges from pressure to deny appeals, and the unfair way the Secretary evaluates people whose disability is based upon pain.

First, medical improvement. We can't over emphasize the importance of the medical improvement standard. Since the Commonwealth began applying the medical improvement standard in Massachusetts we've seen a real drop in the number of terminations.

Prior to the implementation of the medical improvement standard the offices of Greater Boston Legal Services, where I work, were deluged with requests for representation from people whose benefits were being terminated. Things have really changed and we are now down to a manageable number of terminations and when we review the cases we see that there has been some effort really made to assess whether the person has improved or not.

Mr. SHANNON. Are we able to conclude from that that many of the unfair determinations resulted from a lack of medical improvement standard? That, in fact, a new standard was put into place by this administration——

Ms. SALTZMAN. Yes.

Mr. SHANNON [continuing]. That reached back and got lots of people who would have been determined to be disabled and said, "You are not disabled anymore, even though your situation is just as bad as it was when you were told before that you were disabled." And basically they were told that even though their condition had not improved, they would lose their benefits.

Ms. SALTZMAN. That was the standard that was implemented by the Secretary prior to the activities of the special commission on disabilities in Massachusetts and in June 1983, the DDS in Massachusetts began applying a real medical improvement standard.

Mr. SHANNON. So without a medical improvement standard any administration can come in, set a new standard for disability and terminate people who had previously been determined to be disabled without showing that their condition had improved at all.

Ms. SALTZMAN. Right. And even admitting that their condition had not improved but just by saying, "We changed the rules and now we are going to kick you off the disability rolls."

Mr. SHANNON. This is an issue that the administration fought tooth and nail in the committee. They wanted to maintain the

right to change the standards when they wanted to, if they felt the need to save money in the program they could change the standards and reach back and tell people, "OK, now even though we said you were disabled you've got to go back to work." I can't imagine anything less fair than that. I think it's the most important part of the legislation.

Ms. SALTZMAN. I would agree with you but I would also point out that you should make no compromises concerning this standard because, I believe that medical improvement is fast becoming the law even without explicit language about it in the Social Security Act because nearly every circuit in the country has now addressed the issue and how the Secretary can't terminate benefits unless there is substantial evidence that the person's condition has improved.

Mr. SHANNON. So stick with the House bill and don't let it get watered down——

Ms. SALTZMAN. Stick with the House bill and don't make any compromises because I think that the courts are behind you on the issue.

The second point that I wanted to make is that the right to receive benefits pending appeal to ALJ must be reinforced. There's nothing quite so drastic as the prospect of losing one's entire income. The Supreme Court has held that under these circumstances, SSI recipients must be given a pretermination hearing with full due process rights.

SSDI recipients should have the same rights. Recent history shows that disabled social security recipients have become a prime target of Federal budget cutters. The administration's zeal for saving money in the Social Security program has led to many unfair and cruel terminations. And we think the best way to protect against that is to ensure that people will have their benefits pending appeal to an impartial administrative law judge.

This leads to third point that I want to make which is that the Secretary's proposal to provide benefits pending a face-to-face hearing at the reconsideration level will not protect recipients against abusive termination procedures. I'm aware that the Secretary has made much lately out of corrective actions being taken within the Social Security Administration. However, we think that the proposed face-to-face hearing regulations are unfair and don't provide even minimum due process for disability recipients.

As I understand the history of the face-to-face reconsideration hearing, it was put forth as a reform that would benefit SSDI recipients. People who were obviously disabled were being terminated by disability examiners who had never laid eyes on them. The theory of face-to-face was that it would eliminate obviously erroneous terminations. Instead of using face-to-face hearings as a reform to benefit SSDI recipients I think that the Secretary's proposals would take away gains which have already been made.

Presently, SSI recipients have the right to benefits pending appeal to an ALJ. The Secretary, in her regulations proposes to require SSI recipients to go through the face-to-face procedure and will terminate benefits if these hearings are lost. Two to four months can pass between the date of a reconsideration decision and the date of an ALJ decision. Furthermore, it usually takes 2 to 3

months for the Social Security Administration to put someone on benefits after winning an ALJ hearing.

Therefore the Secretary's proposals will subject SSI recipients to up to 7 months without benefits, whereas under the present scheme, successful SSI appellants have no interruption in benefits.

Mr. SHANNON. So, face-to-face at the reconsideration level is no substitute for continuing benefits through the ALJ level.

Ms. SALTZMAN. Yes. And there are specific objections we have to those face-to-face regulations which are summarized in my testimony that I've submitted in writing. So, I won't go into them now. I wanted to make, really, a couple more comments.

One is that we have seen some evidence recently that the Social Security Administration is pressuring the administrative law judges to make fewer favorable decisions. I believe that one of the fairest ALJ's in this region may have been singled out for Bellmon reviews in an effort to force this judge to deny appeals.

Mr. SHANNON. Why don't you explain what a Bellmon review is?

Ms. SALTZMAN. A Bellmon review is a review of a favorable—well, a review of a decision rendered by an ALJ that's done kind of sua sponte by the Appeals Council. So, the Appeals Council on its own motion will decide to review certain ALJ decisions supposably to determine accuracy and correctness.

Mr. SHANNON. Who does the review?

Ms. SALTZMAN. I believe the Appeals Council does the review. Now, what we've seen is the Bellmon reviews have been targeted toward judges who are very fair and equitable in their dealings with recipients and that the decisions that are being reversed are favorable decisions and not unfavorable decisions.

I believe presently that all administrative law judges in this region are denying appeals of people who are disabled and entitled to receive benefits. In reading some of the decisions from ALJ's sometimes I just can't believe my eyes. Cases are being denied that should be won and which, I think, would have been won a year ago. Of course, I'm not in a position to provide statistical evidence but the anecdotal evidence of this is very strong.

And it could have something to do with the fact that in the litigation that is going on around the country against the Social Security Administration legal services lawyers have been able to point to high ALJ reversal rates as evidence that the Secretary's disability evaluation procedures are fundamentally wrong and fundamentally unfair. Instead of responding to this by correcting her standards and procedures the Secretary has responded by improperly pressuring the ALJ's to stop reversing terminations and denials.

I believe that even the face-to-face reconsideration procedures as they have been proposed by the Secretary represent an effort to undermine the independence and the effectiveness of the ALJ's. So, I would recommend that Congress do everything it can to insulate ALJs from administrative pressures to deny appeals.

Which means that Bellmon review activity should be ceased and the Bellmon amendment should be repealed. SSA should be directed to refrain from making reference to the desirability of reducing ALJ allowance rates. An ALJ should be directed to follow Federal court decisions and SSA's policy of nonacquiescence with decisions it disagrees with should be prohibited.

The last comment that I wanted to make refers to the issue of pain. I think the testimony of Arlene Potvin is a very good description of the problem.

The Secretary has very stringent and unfair standards for evaluating pain. These policies basically preclude consideration of subjective complaints. Under the Secretary's policies, complaints of pain are ignored unless there is a diagnosed medical condition present, unless there is medical evidence that the medical condition could be expected to produce the pain to the degree the patient complains of and unless the pain itself is clinically documented.

Now, there are many situations where people will be in terrible, terrible chronic pain and the doctors just won't be able to figure out what is wrong with them. And I think Arlene Potvin's case may be an example where a condition goes undiagnosed for under a year. Under those circumstances the Federal regulations require the State to ignore the subjective complaints because the medical diagnosis is not yet in and this leads to incredibly unfair and basically horrible decisions in this area.

Mr. SHANNON. As you know, when the legislation was first proposed it had criteria that would have allowed the inclusion of subjective evidence of pain for purposes of determining disability. The administration, of course, came in and said that was going to be enormously costly. We ended up having to compromise on that point.

There will be a major study of pain done with a report back to the Congress so we can take a legislative action. I think that's got to be high on the list of the items we've got to deal with after we get this bill through and it will be, I assure you.

Ms. SALTZMAN. Thank you. That concludes my comments.

[The prepared statement follows:]

STATEMENT OF JUDITH SALTZMAN, GREATER BOSTON LEGAL SERVICES

My name is Judith Saltzman. I am a Senior Attorney for Health and Disability employed by Greater Boston Legal Services. Thank you for inviting me to testify today.

I wish to address four main topics: medical improvement; the need to guarantee benefits pending appeal to an administrative law judge; the dangers of the Secretary's proposals for face-to-face hearings at the reconsideration level; the need to insulate administrative law judges from pressure to deny appeals of terminations and denials; and the unfair way that the Secretary evaluates people whose disability is based upon pain.

MEDICAL IMPROVEMENT

First, medical improvement. We cannot over emphasize the importance of this standard. Since the Commonwealth began applying the improvement standard, we have seen a significant drop in the number of people whose benefits have been terminated. Formerly, the offices of Greater Boston Legal Services were deluged with requests for representation from people faced with termination. We took as many of these cases as we possibly could, and our success rate was very high. It was quite clear that the Secretary was trying to terminate people who were still disabled and still eligible to receive SSI and SSDI.

The situation has changed. The number of requests for representation has become more manageable, and, the cases reflect that a real evaluation of improvement has been carried out. While we still prevail in many of the appeals we handle, and we still think that some of the Secretary's evaluative standards are unfair and illegal, there is no question but that this situtation has improved in Massachusetts.

I am aware that the disability package that is pending in Congress incorporates a medical improvement standard. I urge you to make no compromises concerning this standard, because medical improvement is fast becoming the law of the land even without explicit language in the Social Security Act. Nearly every circuit has issued an opinion holding that the Secretary must not terminate benefits absent a showing of medical improvement. Justice Rehnquist, in his recent opinion in *Lopez* v. *Heckler*, noted that there is not substantial disagreement among the circuits on the issue, and that it is therefore unlikely the Supreme Court will agree to review the many decisions which have already been made in our favor.

BENEFITS PENDING APPEAL

The second point I want to make is that the right to receive benefits pending appeal to an administrative law judge must be reinforced. There is nothing so drastic and terrifying as the prospect of losing one's entire income. The Supreme Court has held that under these circumstances, SSI recipients must be given a pretermination hearing with full due process rights *Goldberg* v. *Kelly*. SSDI recipients should have the same rights. Recent history shows that disabled social security recipients have become a prime target of federal budget cutters. The administration's zeal for saving money in the Social Security program has led to many unfair and cruel terminations. One of the best ways to protect SSDI recipients against this type of abuse is to ensure they will continue to receive benefits pending appeal of their case to an impartial decision maker.

FACE-TO-FACE HEARINGS AT RECONSIDERATIONS

The Secretary's proposal to provide benefits pending a face-to-face hearing at the reconsideration level will not protect recipients against abusive termination procedures. This leads to the third point I wish to make: The proposed face-to-face hearing regulations are unfair and do not provide even minimum due process for disability recipients.

As I understand the history of the face-to-face reconsideration hearing, it was put forth as a reform that would benefit SSDI recipients. People who were obviously disabled were being terminated by disability examiners who had never laid eyes on them. The theory of face-to-face was that it would eliminate obviously erroneous terminations.

Instead of using face-to-face hearings as a reform to benefit SSDI recipients, the Secretary's proposals will take away gains which have already been made. Presently SSI recipients have the right to benefits pending appeal to an ALJ. The Secretary, in her regulations proposes to require SSI recipients to go through the face-to-face procedure, and will terminate benefits if these hearings are lost. Two to four months can pass between the date of a reconsideration decision and the date of an ALJ decision. It usually takes two to three months for the Social Security Administration to get someone on benefits after winning an ALJ hearing. Therefore, the Secretary's proposals will subject SSI recipients to up to seven months without benefits, whereas under the present scheme, successful SSI appellants have no interruption in benefits.

We have serious problems with specific portions of the Secretary's face-to-face reconsideration hearing proposals. The biggest problem is that the proposed regulation would permit a federal employee who is not present at the face-to-face hearing to make the decision in the case. The Director of the Office of Disability hearings would be able to change any hearing officer's decision with which he disagreed, even though he wasn't at the hearing. This undermines the very purpose of having face-to-face hearings, which is for the decision maker to actually view the recipient before his or her benefits are terminated.

Another problem we have with the federal proposals concerns adequacy of notice for the hearings and the right to supplement the record. The federal regulations guarantee only 10 days' notice of the hearing. The right to request rescheduling of the hearing is limited to situations in which "there are circumstances beyond your control which make it impossible for you *or* your representative to attend your . . . hearing," and even then the recipient is expected to make the postponement request 10 days in advance. Unreasonable limitations are placed on the right to submit evidence after the date of the hearing.

All these comments are to say that the face-to-face hearing regulations do not provide adequate due process guarantees and that they are no substitute for ALJ hearings, and that benefits should not be terminated before the ALJ level.

MAINTAINING ALJ INDEPENDENCE

These comments lead to the next point that I wish to make. We have seen some evidence of the Social Security Administration pressuring ALJ's to make fewer favorable decisions. I believe that at least one of the fairest ALJ's in this region may have been singled out for Bellmon reviews in an effort to force the judge to deny appeals. I believe that all ALJ's in this region are denying appeals of people who are disabled and entitled to receive benefits. I think cases are being denied which should be won and would have been won a year or so ago. I am not in a position to provide statistical evidence, but I do keep track of all denials handled by Greater Boston Legal Services and the anecdotal evidence is very strong.

In the litigation that has gone on around the Country, legal services lawyers have been able to point to high ALJ reversal rates as evidence that the Secretary's disability evaluation procedures are fundamentally wrong and unfair. Instead of responding to this by correcting her standards and procedures, the Secretary has responded by improperly pressuring the Administrative Law Judges to stop reversing the terminations and denials. I believe that even the face-to-face reconsideration procedures proposed by the Secretary represent an effort to undermine the effectiveness and independence of the ALJ's.

Congress should do everything it can to insulate ALJ's from administration pressures to deny appeals. This means that Bellmon review activity should be ceased and the Bellmon amendment repealed. SSA should be directed to refrain from making reference to the desirability of reducing ALJ allowance rates. ALJ's should be directed to follow federal court decisions, and SSA's policy of non-acquiescence with decisions it disagrees with should be prohibited.

PAIN

My closing comments refer to a major problem we're seeing in cases today. Although the number of terminations has decreased (and even ceased due to the temporary moratorium Governor Dukakis imposed) the number of people inappropriately denied on initial application is still very high. A major factor in this is pain. The Secretary has very stringent and unfair standards for evaluating pain. These policies basically preclude consideration of subjective complaints. Under the Secretary's policies, complaints of pain are ignored unless medical signs show that there is a medical condition present, that the medical condition could reasonably be expected to produce the pain to the degree complained of and unless the pain is clinically documented.

These standards leave no room for individualized evaluation of cases and lead ALJ's to discredit what disabled people have to say about their own experience of pain. Courts in this circuit routinely over turn ALJ's on the pain issue, holding that subjective complaints can be the basis of a disability determination. The Secretary should be directed to act accordingly.

This concludes my comments. I would be happy to answer any of your questions.

Mr. SHANNON. Let me ask you a question on the nonacquiesce issue. The Social Security Administration has been ignoring court decisions, circuit court of appeals decisions, and we have taken some action in our legislation to try to require them to pay some attention to those decisions.

Had there not, in fact, been some court cases where the Social Security Administration has been specifically criticized by the courts for having refused to comply with the decision?

Ms. SALTZMAN. Yes, there have been many decisions where courts have expressed utter dismay and disgust, really, over the Social Security Administration's assertion of the right to nonacquiesce.

Mr. SHANNON. Is there any other Federal agency that is able to get away with saying they are above the law in this way that you are aware of?

Ms. SALTZMAN. Not that I'm aware of, no. I know of no Federal Agency that's pressing that opinion in court; whether they behave that way is another matter.

Mr. SHANNON. Let me thank you again. You have been wonderful in helping us deal with this issue. One of the most troubling aspects of this is that, at the same time that the administration has denied people the benefits that they are due, they have also cut back drastically in the amount of money for legal services.

Ms. SALTZMAN. Yes, the President has zero funded us for the fiscal 1985 budget.

Mr. SHANNON. Which is just abhorrent. If we hadn't had your expertise, and that of your colleagues and Mark Coven who we asked to assist us when we started focusing on this issue, and if we didn't have the help of people like Damian, then you would have a lot more cases out there of unfairness and I think we all acknowledge that we are only scratching the surface in trying to help people to protect their rights.

There are hundreds of thousands of people out there who are disabled, who can't get any legal counsel at all and who don't have people who understand the system well enough to get them through the redtape. Arlene, now what would have happened to you if you hadn't run into Damian?

Ms. POTVIN. I think another year, easily at least.

Mr. SHANNON. It's criminal to allow that situation to exist in the country and you've done great work in trying to change it and we'll do our part in Washington.

Ms. SALTZMAN. Thank you.

Mr. SHANNON. We are going to take a 5-minute recess so that I can make one telephone call and then we will go on with the rest of the hearing.

Perhaps, I could call the next panel of administrative law judges. Is Judge Sweeney here? Judge Pierce? Why don't you come on up, and thank you all very much.

This will be a 5-minute recess.

[Whereupon, a short recess was taken.]

Mr. SHANNON. If you have written statements, we'll be glad to put the whole statement in the record if you want to summarize it. Whatever is your pleasure is fine with me. I want to thank you. Mr. Pickle had to catch a plane to Texas but wanted me to extend the welcome of the subcommittee and to let you know that a full transcript of this hearing is being kept and will be used by the subcommittee in a very critical way so we have a head start as we try to push this legislation through and we greatly appreciate your willingness to come here today.

Mr. SWEENEY. Well, we thank you, Congressman. Your committee and Chairman Pickle, too, have been very, very kind to us and we're grateful for the opportunity to be here. Judge Pierce was our region I representative, has a written statement and I think he probably wants to summarize a few points and indicate that some of the problems that we've had to face the last few years really are continuing problems for us. And I think he can do that and would be very happy to answer any questions that you have, Congressmen. Thank you.

Judge Pierce.

STATEMENT OF GEORGE C. PIERCE, ADMINISTRATIVE LAW JUDGE, DIRECTOR, REGION I, ON BEHALF OF THE ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INC.

Mr. PIERCE. My name is George Pierce. I've been an administrative law judge for the Department for the past 11 years. I'm presently in the Boston hearing office and I'm here today on behalf of the Association of Administrative Law Judges in the Department of Health and Human Services.

As Judge Sweeney pointed out, I am the New England regional director of that association and I've been authorized to present the views of the Association today on proposed legislation. A written statement has been prepared and has been supplied to the Chair and I'd like to just read it. It's quite brief and then I'll be happy to answer any question that you might have.

The Association of Administrative Law Judges in the Department of Health and Human Services wishes to go on record in support of the committee bill dealing with the disability process and to urge the inclusion of certain additional provisions to strengthen said bill.

The ongoing controversy over the conduct of continuing disability investigations and the cessation of benefits of deserving claimants strikingly illustrates the need for disability reform legislation. The administration's policy of nonacquiescence in court decisions is repugnant to our basic constitutional framework and it is clear that legislative action must be taken to correct this abuse. The standards by which disability is measured should be clarified and modified so that they will be more understandable, more predictable, and more humane. For all these reasons, we support the pending legislation.

There is one extremely important problem, however, which the present legislation does not address, and that is the decisional independence of the administrative law judges who hear the disability cases on appeal. Unless this independence is preserved and strengthened, the beneficial effect of this disability legislation will be substantially lessened, if not altogether negated.

The recent report of the Senate Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, September 1983, states in no uncertain terms, that the administration has been placing illegal and improper pressures on judges to deny cases, that is, to take or keep people off the rolls, and has pressured the judges to turn out more and more decisions without regard to the quality of the decisionmaking process. As a result of these pressures, the judges have brought suit to restrain the administration from continuing these practices.

Although relief is hoped for from the court, we in the Judges' Association feel strongly that the only way to guarantee the decisional independence of the judges in the Department of Health and Human Services is by legislation that would remove them from the control of the agency. Bills to accomplish this, by creating an independent Review Commission, have now been introduced in both branches of Congress. In the House, these provisions are contained in H.R. 3541—see especially section 11, Social Security Review Commission—introduced last year by Congressman Wise of West

Virginia. The corresponding bill in the Senate is S. 1911 introduced last year by Senator Pryor of Arkansas. A brief summary of these bills is attached hereto for your consideration.

The need for such legislation has never been more urgent. The decisional independence of the judges has never been more threatened as witnessed by a recent series of actions by the administration to fire judges for low production and lack of cooperation. And I've attached a clipping from the Federal Times which will give you a summary of those recent actions. We urge you to include these provisions in any disability reform legislation which you may propose.

That ends my statement. I'd just like to say in conclusion, Mr. Chairman, to echo the words of Judge Sweeney that we're deeply appreciative of the opportunity to come here today and we're most grateful for the efforts that you've made over the years to guarantee the due process hearings in this area and to strengthen the disability determination process. And we're very thankful and wish to thank you for this opportunity to be here.

[Attachments to the prepared statement follow:]

DUE PROCESS PROBLEMS IN THE SOCIAL SECURITY SYSTEM—A CASE FOR THE ESTABLISHMENT OF AN INDEPENDENT FORUM OF ADMINISTRATIVE LAW JUDGES IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUMMARY

The attached paper proposes the separation of the Office of Hearings and Appeals (OHA), Social Security Administration (SSA), Department of Health and Human Services (DHHS), from SSA, and to redesignate it as an independent review commission responsible for hearing all DHHS cases. Such action would be consistent with organizational structures in other agencies utilizing Administrative Law Judges (ALJs), and would incur no additional cost to the Government.

Reconstituting OHA as an independent review commission would make organizational sense, enhance the appearance of justice, promote due process and the quality of justice afforded the individual litigant, and provide for a healthier and more responsive institutional "legal system".

SSA, the component under which OHA now functions, has been unable, conceptionally, to deal with the role of OHA's ALJs and their decisional independence guaranteed by the Administrative Procedure Act, resulting in strained relationships, misunderstandings, and, in some instances, lack of cooperation. Further, the increasing caseload in SSA has magnified the conceptual differences between SSA and OHA, the former attempting increased administrative control in meeting program goals, and the latter, for its part, insisting on conditions promoting the concept of fair evidentiary hearings.

The principal problems in the present Social Security system of case adjudication are highlighted in the attached report and can be described as those resulting from case explosion; unwarranted criticism of ALJs, causing indirect pressure to deny claims; the threat of interference with ALJ performance, resulting in the destruction of the system's integrity; SSA's application of standards more strict than required at the lower levels of case processing; deficiencies in the consultative examination process and in determining residual functional capacity, especially at the lower levels of adjudication, which adversely affect the quality of the record; and SSA's non-acquiescence to certain court decisions relating to substantive issues. Most of the problems outlined, as they affect the performance of ALJs, could be largely rectified by the reassignment of ALJs to an independent Commission within the structure of DHHS. Only then would the public be assured of a Social Security system of adjudication, particularly at the appeals level, grounded in fairness and free of institutional bias and control.

THE BILL

The proposed legislation, also attached hereto, would accomplish the following:

(1) Create the Health and Human Services Review Commission (in essence, redesignating OHA as such Commission) to hear and decide cases for the Secretary of DHHS, but independent of the various components of DHHS responsible for administering their respective programs.

(2) Provide for 3 Commissioners (one serving as Chairman), appointed by the President for six year terms with the advice and consent of the Senate, to constitute the Review Commission.

(3) Provide for the appointment and supervision of (a) ALJs, in accordance with the Administrative Procedure Act, by the Commission to preside over hearings and issue decisions on behalf of the Secretary of DHHS, and (b) other employees as required.

(4) Provide for the transfer, on the effective date of this Act, of all ALJs and necessary employees from other components of DHHS to the Review Commission.

(5) Authorize the Review Commission to make such internal rules and procedural regulations as are necessary or desirable for the orderly transaction of its proceedings, subject to the Administrative Procedure Act, but providing for the application of existing procedural rules and regulations in the interim.

(6) Provide for remand authority by the Commission to other components of DHHS, as appropriate.

(7) Provide for Review of ALJ decisions at the discretion of the Commission.

(8) Provide for appeal, to the U.S. Court of Appeals, by a party adversely affected by a decision of the Commission, within 60 days after such decision is issued, with the court applying the "substantial evidence" rule in its review of the Commission's decision.

[From the Federal Times, Feb. 20, 1984]

MSPB Says Agencies Can Fire Law Judges for Not Producing

(By Eric Yoder)

Agencies may control their administrative law judges more closely under a series of recent decisions by Merit Systems Protection Board.

In four cases decided the same day, law judges failed to convince MSPB they should be virtually independent of agency supervision and that standards for their firing should be on par with those for federal judges.

The merit board instead held that law judges may be fired for failing to meet agency-imposed performance levels and that the judges are not exempt from supervision.

MSPB also told the judges they must comply with management policies not affecting their ability to issue fair decisions.

The Administrative Law Judge Conference called the decisions a "threat to the existence of an independent administrative law judge corps."

"It establishes guidelines and a blueprint for removing ALJs who emphasize thoroughness at the expense of moving cases," a conference representative said.

"The pressure to speed up rates of disposition will inevitably induce judges to cut corners at the cost of quality," he said. Law judges at the Health and Human Services Department have filed a suit in federal court against allegedly improper quotas.

Before the MSPB decisions, no precedent existed on whether subpar performance warranted removal or discipline for law judges, who decide issues ranging from entitlement claims to internal government personnel issues.

MSPB's unanimous decisions now put administrative law judges in a middle ground between the standards used for firing or disciplining civil servants and those used for federal judges.

Administrative law judges may be fired or disciplined for "good cause," while most federal employees may be removed for the "efficiency of the service."

But Congress didn't spell out what it meant by "good cause," and no previous cases addressed this issue.

The law judges argued that "good cause" is the same as the "good behavior" standard in the Constitution for removing federal judges. Those judges may only be removed for treason, bribery or other high crimes or misdemeanors.

The lead case involved Robert Goodman, whom the Social Security Administration wanted to fire for low productivity.

Goodman was singled out when the agency reviewed the performance of all its judges who issued fewer than 20 decisions a month. Goodman was deciding about 16 applications for benefits a month, about half the average output of SSA law judges.

The agency tried to give Goodman assistance, but when he refused and his output remained low, SSA proposed to fire him. All firings of law judges must be cleared by MSPB.

At hearings, SSA said it has a management interest in speedy decisions, noting it has been sued many times for delaying benefits. At the same time, the administration was pushing to take marginal claimants off the benefit rolls.

Goodman and other law judges claimed that once a minimum output is set, it will be raised continually, pressuring them to issue quick opinions at the expense of thoroughness.

They also said appointed agency officials could manipulate performance standards to have law interpreted to fit the governing party's ideas.

MSPB law judge Edward Reidy last year ruled in favor of the agency, saying that low productivity does constitute "good cause" and that Goodman's output merited firing.

The full merit board now has upheld the precedent, saying performance standards for law judges are not necessarily improper.

"A blanket exemption of ALJs from performance-based actions could easily erode public confidence [in the agency]," the board wrote.

"Moreover, the distinction between poor performance and misconduct can be illusory."

The law judge group said the decision "apparently disregards" Reidy's finding that Goodman is slow because he is very thorough, "The board seems to be saying that regardless of thoroughness, the judge can still be removed for low productivity," the spokesman said. "They're penalizing the perfectionist."

The group said that turning out cases without completely examining the facts also could be "good cause" for removing a judge.

But while setting the precedent, the board overturned Goodman's firing, saying SSA failed to prove his output was unacceptably low.

The board made the same ruling in a second case involving law judge Jerry Brennan, also of SSA. But the merit board sent the Brennan case back for reconsideration of insubordination charges that may merit his removal.

"An ALJ's independence is qualified, it does not provide immunity from appropriate supervision, MSPB wrote in the Brennan decision.

"Where a management need exists to impose reasonable requirements which would not affect an ALJ's ability to provide full and fair hearings and to render impartial and complete decisions, an ALJ would not be justified in refusing to comply with such instructions."

Insubordination also was the issue in a third case involving SSA judge Donald Manlon, whose 30-day suspension was upheld. The agency charged him with refusing to follow orders on the scheduling and handling of hearings.

"Agencies must have the power to discipline an ALJ for an insubordinate and unreasonable refusal to carry out his primary function of hearing and deciding cases," the decision says.

The Brennan decision puts "intense pressure on the judge to do what his supervisors want and affects the independence of the judge," the ALJ spokesman said.

He said the group hopes Congress will look at the decisions and consider whether they will undercut the independence of law judges.

In the fourth case, MSPB upheld the firing of SSA law judge James Davis on charges of "lewd and lascivious behavior."

The board ruled such behavior constitutes "good cause" for firing because it upsets the work place and erodes public confidence in the administrative process.

Mr. SHANNON. Thank you, Judge. Mr. Sweeney?

STATEMENT OF JOHN T. SWEENEY, ADMINISTRATIVE LAW JUDGE

Mr. SWEENEY. Just very briefly, I'd like to just add one point to maybe bring some of these issues home. The Grace report on various savings and costs recommends some changes in the system and they use as their rationality, high cost of the decision and the appeals process. I had a case some months back, Mr. Chairman, I think the lady was from your district. And, as I remember it, where she was awarded $1,000. She was an elderly woman. She was

awarded it from a trust fund in the community that picked out deserving people every year and provided her with the money.

Because she thought the money was to be used, because it was that kind of a gift, because she had a need, she spent the money without going down and telling the Social Security Administration that she received it. When they got wind of this, they stopped her quarterly payments and began to reduce the payments that she was getting in her regular check. Their rationale being that she knew, or she should have known, that that money should have been reported. And it must have cost the administration, if the Grace report is correct, something between $7,000 and $10,000 to bring that to a hearing for $482. And that is not an untypical situation.

This was a woman who was poor and got some charity from some trust fund from one of the communities which awarded, upon a regular basis, moneys to needy people. Her name had been put in, she had been determined to be, but it's these kinds of cases that we're seeing and the same kind as Judge Pierce has so delicately put, the pressure to get out more decisions and to harass us either by reconfiguration or office kinds of changes.

It just doesn't end and it's the kind of thing that will drive the good people out of this—because they really want to bureaucratize, they do not want a quasi-judicial hearing, they don't want us to see these people and to hear their stories and it's just something that's been going on for years and I know you're aware of it.

But we're grateful again, very much for just the chance to be with you and talk with you.

Mr. SHANNON. Let me ask you both, if I could, now, Judge Pierce, in your testimony you talked about harassment of judges by the administration, getting them to toughen up and placing illegal and improper pressures on the judges to deny cases, to keep people off the rolls. What form do those pressures take?

Mr. SWEENEY. Primarily, the harassment centered in the Bellmon Review Procedures which has been described to you by a previous witness of this hearing, and the judges who were on the liberal side, if you will, and allowed a large number, a large percentage of cases were actually targeted for review. Their cases were examined to a far greater extent than the other judges' cases were.

Mr. SHANNON. So, you sit there as a judge and you know that if you deny people benefits, nobody's going to bother you. But if you make people eligible for benefits you might be subjected to these reviews by the——

Mr. PIERCE. That has been substantially true. Also, judges who allowed a high number of cases were often not given any of the regular benefits of continuing education and——

Mr. SHANNON. Are these discretionary?

Mr. PIERCE [continuing]. Staff. On the discretionary granting of benefits, things are withheld, there's subtle pressures and there are overt pressures. Both types have occurred.

Mr. SHANNON. Under those circumstances I have to commend you. I know how courageous it is for you to come here and to take this leadership role. The judges have been terrific in this in pointing out some of the abuses that exist in the program. You could just sit there and sit on your cases and make your decisions and

not get involved in the broader policy questions if you wanted to. And the fact that you have been wanting to come forward and help us reform this program is very impressive and very necessary.

Mr. PIERCE. It's funny, it's not a catch-22, and we're not here as the greatest public service and we're doing this because it's our goal in life. We like the job.

What we have been seeing is that the people that we're serving and the people that we have to hear the cases of, we're seeing them getting, from time and time again, the worst part of the deal. I think what makes it, if I may—we're going back and forth but the compliments are well deserved. If we didn't have you doing this for us, I don't think we could continue to do this any longer.

I don't know what good man with a good background or a good woman, a lawyer, would want to stay in this business and hear these cases. Because we know them. We see these people. And we have them in front of us and we go over the regulations with them. We know that more than half of the time, we know that they have not been given a fair deal. It makes it easy for us to know if there's somebody to catch the ball that we're throwing.

Mr. SWEENEY. The principal thing, Congressman, I think is to guarantee judicial independence in our decisionmaking. That doesn't mean that we're going to allow every case but gives us the right to call them as we see them.

Mr. SHANNON. One of the things that the administration wanted to do was to close the record so that new evidence couldn't be offered at the administrative law judge level. How do you think that that would have affected the quality of adjudication?

Mr. PIERCE. I don't think they would need U.S. administrative judges in that instance because more times than not the record that's been prepared by the district office is just the first cursory review of some of the medical evidence that might be available. I would say that better than 60 to 70 percent of the cases that I hear that the evidence has come in from consulted exams or a worsening condition. New evidence that is secured afterwards has been the compelling reason that the case has been found in favor. To close the record means that they have really bureaucratized the problem and they really don't need us on either system.

Mr. SHANNON. As you know, we were able to fight that off in the bill.

The thing that disturbs me about this program is that most people who apply for disability benefits don't feel they're getting into their adversary relationship with anybody. They feel that they're entitled to benefits because of a disability. It's an insurance program. So the average person doesn't feel a need to go out and hire a lawyer to protect their rights at that initial stage. Many of them, as you know, get the administrative law judge without a lawyer.

What percentage of the cases come to you without a lawyer?

Mr. SWEENEY. It used to be quite substantial. It used to be around 30 to 40 percent. It's down to about 20 percent now.

Mr. SHANNON. Because of all the publicity——

Mr. PIERCE. That's still a large number.

Mr. SHANNON. So people go in and apply for benefits and they are entitled to them. They don't feel that the Government is out to hurt them.

If they don't have the ability to make their cases at some later point in the process, once they have retained counsel or get their evidence together in a better way, then I just think you are going to be denying people their basic rights in this program.

Mr. PIERCE. I think one of the things I enjoy doing more than anything else is, when a case is really a good case and somebody has worked for a long time and is now in front of us and is asking for either a closed period or somebody wants to go back to work, to be able to say, "Well, these are what these programs are designed to do. They are here to help you either make that transition until the problem is solved or they are here to help you because you had an accident at one time."

That's a great feeling and that's what the program—that's what the intent was. This administration doesn't seem to see that.

Mr. SHANNON. One final question, if I might.

When Mr. Pickle and I were fighting for the continuation of benefits through the appeals process to the ALJ level, one of the arguments the administration kept on raising was that this was going to encourage frivolous appeal. People would appeal their cases only so they could continue to get benefits for a few more months.

Has that been the experience?

Mr. SWEENEY. That's a hard one to comment on. As far as I'm concerned, 99 percent of the people who come in are of good will, of good motivation, and they believe they are disabled.

And they are entitled to have a fair and full trial of the issue. I think it is callous and lots of words I could name to cut them off at that point.

Mr. SHANNON. They really aren't.

Mr. SWEENEY. That doesn't mean that they're guaranteed there's going to be a lot of them. I deny about half of the cases.

Mr. SHANNON. But it hasn't been your impression that because benefits are continued some people just pursue the case for purposes of continuing to get the benefits.

Mr. PIERCE. People, when they come in, do it in good faith and tend to try to make a case if they deserve the benefits. Sometimes you agree with them——

Mr. SWEENEY. Good faith and allegation, you know, there are a few people who perhaps try the Government, but very few.

Mr. SHANNON. What would happen if benefits weren't allowed through the whole appeals process?

Mr. SWEENEY. You mean if there was no program?

Mr. SHANNON. If, when benefits were terminated, people were denied benefits until they successfully completed their appeal. What would happen?

Mr. SWEENEY. It would be pretty devastating in social terms.

We had many cases—many cases, I want to amend that—we had cases around the country and it was just too many if there is more than one—where people who were going through that process.

We had them in our own offices when people took their own lives in waiting for that. I can think of one 21-year-old boy who did it. It was a devastating thing to see. You'd see a exacerbation of their

injuries, their situation, their home life. You'd see worsening of every aspect of their living. As it is, they are frightened waiting for the hearing. As it is, they have problems trying to make that transition.

Mr. PIERCE. I might just add one thing to that. If they are presently on the rolls it means that there's been determination previously that they are disabled. I think they are entitled to a presumption of continuing disability until they have this full and complete trial.

It doesn't mean that they are going to be continued, as I say, but they have the right.

Mr. SHANNON. Well, Judge Pierce and Judge Sweeney, thank you for all of your responses. I hope that we will be able to come back to you within a couple of weeks with some very good news.

Mr. PIERCE. We're very grateful. Thank you very much.

Mr. SHANNON. Esther Pina, chairperson of the Ad Hoc Committee on Social Security Disability will be our last witness this morning.

Ms. Pina, welcome.

STATEMENT BY ESTHER PINA, CHAIRPERSON, AD HOC COMMITTE ON SOCIAL SECURITY DISABILITY

Ms. PINA. First of all, I like to thank the subcommittee for inviting me to testify.

I will not read my whole statement because there are some points that I would like to make that I didn't write in my written testimony. So I'm only going to read the first page of my statement.

The Ad Hoc Committee on Social Security Disability strongly supports the Pickle-Shannon Bill currently in the house.

As the SSA has no intention of following its own rules and regulations and is currently ignoring all court decisions on the medical improvements—such as *Miranda*—and is illegally terminating people, strong legislation is needed to protect the disabled.

As part of the bill Congress should enact into law the Federal court decisions that the SSA must show significant medical improvements before terminating benefits to the disabled.

The committee would like to address issues that are a concern for all of us.

The first issue being the quick reexamination of claimants who have had their benefits restored by an ALJ and who are found to be permanently disabled and yet get a notice shortly after their benefits are restored that they are going to be reviewed again within 1 year and are given a date as to when they are going to be reviewed. This notice coming from the Office of Disability Operations in Baltimore.

Our questions to this committee: Who in Baltimore determines this and how is that determination made? Is this a legal and standard practice?

Our second concern is the face to face interviews at the district offices or field offices of SSA. What purpose do they really serve?

There are no qualified personnel at the face-to-face interview to make a determination as to whether a person is disabled or not.

Therefore the face-to-face interviews are ineffective and meaningless and a waste of taxpayers money. The cases are always sent on to state DDS's anyway.

The third concern is that SSA should be required to waive the so-called overpayments for SSI recipients because in 90 percent of the cases it results in undue hardship.

[The prepared statement follows:]

STATEMENT OF ESTHER PINA, CHAIRPERSON, AD HOC COMMITTEE ON SOCIAL SECURITY DISABILITY

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The third concern is that SSA should be required to waive the so call overpayments for SSI recipients because in 90% of the cases results in undo hardship.

Is there a way to ease the strain on the SSDI system? We think there is.

If the workers' compensation system in this nation was brought up to date there would be no need for workers who are injured on the job or who suffers from work related illnesses that results in the worker to become disabled to apply for SSDI benefits.

The insurance companies should be totally liable for the injured worker. As the compensation systems now stands, the disabled worker has no other choice but to turn to SSDI.

The insurance industry is passing the buck to the Federal Government.

According to the Boston Globe Spotlight on Oct. 4, 1981 "Twice as many Massachusetts disabled workers seek Social Security disability allowances as the national average." Is it because there are more job injuries here, no, it is because we have one of the worst systems in the nation.

The point of all this is we suggest that there should be a Congressional task force set up to study the possibility of setting up a nation wide compensation legislation that would not discriminate from state to state so that SSDI would not bear the cost of the disabled worker.

SOCIAL SECURITY AD HOC COMMITTEE ON DISABILITY

(Esther Pina, Chairperson; Susan Hislop, Vice Chairperson; and James Gorman, Acting Secretary)

The Ad Hoc Committee on Social Security Disability was formed over a year ago to address the needs of the thousands of disability recipients in our state who had nowhere else to turn for information, referrals, and moral support. In the course of this time we have had contact with other recipients who have voiced the same problems with SSA and Massachusetts DDS.

The Congress mandated a careful review of all non-permanent disability cases every three years. The SSA, rather than wait until the pre-determined time, began

immediately reviewing all cases with the goal of completing the review of the millions of disability cases in three-years time. It began sending the state DDSs many times more cases each month than they could properly handle with a clear mandate to TERMINATE. The Administrative Law Judges have claimed interference. The SSA has attempted to block reforms in Massachusetts. The SSA has attempted to cease payments to appealing beneficiaries which were mandated by Congress. The SSA continues to insist that 20% of beneficiaries are actually ineligible and it is making few mistakes. The terminations continue as do the eventual reinstatements. Meanwhile the disabled continue to suffer.

Since it is so difficult to initially receive benefits and the SSA is giving the DDS a 97% accuracy rate, how can they claim that 20% are erroneously on benefits?

Why is it that persons with overwhelming medical evidence to the effect that their conditions have not only not improved but are worse are routinely terminated? Why is it that ⅔rds of these terminations are overturned by the ALJ who is the first person to objectively look at the recipient and all his/her medical evidence?

Why isn't SSA being held accountable for ignoring laws and court orders (such as Miranda)?

Why is it that you can be considered disabled in one state and not qualify in another, as SSA has allowed in Minnesota?

Why is it that evidence given by DDS's own consulting physicians supporting the recipient's disability is consistently ignored or contradicted by the DDS (just as it ignores and contradicts the treating physician's reports)? Why is all this money being spent on CEs? Just for show? Some beneficiaries are being terminated without a CE or ANY contact with DDS whatsoever.

The level of training for claims examiners has come under criticism as has been the level of training for DDS staff doctors. Recent "reforms" and "new training procedures" have been shown to be cursory, ineffectual, and just-for-show. The recipient should expect a high level of competency and credentials in the person responsible for making a correct decision in his/her case.

Why is there a consistent failure to refer terminated beneficiaries to rehabilitation agencies? Why do these agencies turn away the few referrals they get because the persons are too disabled for them to rehabilitate?

What can be done to reimburse reinstated beneficiaries for the damage caused by their illegal and improper terminations both physical and financial and the large legal fees borne by these persons?

The SSA takes months to pay retroactive benefits after reinstatement and to commence regular benefits. The SSA does not even pay interest on the money improperly withheld.

When will SSA be held accountable for its practice of making changes in Social Security regulations without prior public, congressional, or judicial review?

What will be done for recipients who are now being terminated and who will be terminated in the future since the time given by congress for the continuance of benefits during appeal is running out? Since it still takes up to a year to receive a hearing and months to receive benefits the need for this continuance of benefits remains a critical issue for the disabled.

Reforms in SSA were to have been completed by the fall making the continuance of benefits unnecessary but how can any reforms have taken place while the SSA is still claiming they have nothing to reform?

The state welfare rolls continue to swell and New York has already filed suit on behalf of 5200 improperly terminated psychiatric patients which have cost the city and state 10 million dollars.

Doctors have not been provided the book of Social Security rules and regulations governing disability and many do not know of its existence. How can they complete reports which will meet the approval of SSA if they do not have the proper information? Of course we have to question the value of correct reports as these are ignored and contradicted by DDS anyway. More spontaneous recoveries have been effected by DDS than the best hospitals, doctors and faith healers combined.

When will SSA cease to be affected by political whim or pressure?

When will anyone be held accountable for the damage done to illegally terminated beneficiaries and the "mistakes" SSA is making?

When will those responsible for the plunder of the disabled be eliminated?

Ms. PINA. There are several points that I want to make on this here. I, myself, was reinstated in February of last year. I got my notice from Baltimore on April 19 of last year that I would be reexamined, expecting my condition to be improved despite all the med-

ical evidence. In fact, one of the judges who was here, put me on as a matter of record. I did not have to go before the administrative law judge. They reviewed my records and put me back on disability benefits.

Mr. SHANNON. Could you explain this then? You got a notice that you were being removed from the rolls and when it hit the administrative law judge they looked at the record and said: "Boy, this is the wrong decision."

Ms. PINA. This is a wrong decision. I didn't have to appear before an administrative law judge.

The notice that I got on April 19 of last year—I can read two paragraphs of it:

> Your claim will be reviewed from time to time to see if you are still eligible for benefits based on disability of blindness. When your claim is reviewed, you will be contacted to give any questions as to whether your eligibility continues.

The very next paragraph:

> Since your condition may improve, we have scheduled you for 02-84. At that time you will be contacted if there are any questions as to whether your condition remains severe. Also, a review of your claim may be necessary if you return to work.

This is part of a quick reexamination; in my case it was 2 months.

So I did get my notice on February 1 that I had to go to the district office for a face-to-face interview. It wasn't even a year yet that I received my notice from Social Security that I was being reviewed again.

Mr. SHANNON. So, when do you have to do that?

Ms. PINA. I went to my face-to-face interview last week and it was absolutely a farce. I already had my questionnaire filled out. When Social Security asked me if I had, any more files or any more documentation, I gave them my recent medical report and then I added one more.

They asked me what else I had and I said, "Social Securityitis." That's on the form. That's going into the Social Security office. It's social securityitis—it's a new disease.

I also wanted to address a problem with the overpayments because I have received several calls from—especially the elderly on the SSI. They chased one woman for $5 and put her through hell, They claimed a $5 overpayment.

Mr. SHANNON. A $5 overpayment?

Ms. PINA. Five dollars overpayment.

Mr. SHANNON. I wonder what it cost to chase that $5.

Ms. PINA. I think most of these overpayments—it's unfeasible on the SSI's.

Mr. SHANNON. Mr. Pickle has made it clear that this is one area that the subcommittee is going to get involved in this year, have hearings on it, and see what we can do to solve the problem. The overpayments issue is a horrendous one. Social Security is spending millions to chase a few pennies—that they wrongfully overpaid—and it makes no sense at all to do that. But it tells you something, doesn't it?

Ms. PINA. Yes, it does.

Mr. SHANNON. That they're so interested in chasing people who are living on such a meager amount of money.

Ms. PINA. It doesn't matter. The cost of chasing this, to spend millions and millions of dollars which would be better served if SSA was made more efficient. I don't know the answers, but I know that, at least, the elderly should not have to repay. I got a call from a woman 71 years old. She was so shook up because they claimed she owed them something like a $172 and that they were going to take it out of her next check. She was getting a check for something like $300 a month or maybe a little bit less. That's what she was living on. She got her review and they didn't take the $172.

One other thing that is also happening to the SSI program which hasn't been addressed. They consider that if you go into a hospital—we're talking about the mentally ill people or someone who has to go to the hospital—and they're on SSI, Social Security will then send them a letter stating that because they had housing we are going to deduct the 2 weeks that you stayed in the hospital—or a month, or whatever it is.

This has to be stopped.

Mr. SHANNON. If you're in the hospital then that's like you don't have to pay your rent money while you're in the hospital?

Ms. PINA. Right. They consider hospital or mental institutions as part of your housing. This is where a lot of the overpayments occur.

Mr. SHANNON. I didn't know that. Did anyone know that? That you don't have to pay your rent while you are in the hospital.

Ms. PINA. It's incredible. I just can't believe this is happening in this country.

Mr. SHANNON. These horror stories that we've heard never cease to amaze me. They just get worse and worse and worse.

The fact that you would have the administration come forward and say that there's no need for legislation and then refuse to come before the Congress and tell us how they are seriously going to address this issue, I think it is terrible.

Maybe what we should have done is rented a bus today and gone up to New Hampshire and found Mrs. Heckler and put the question to her directly—while she's out there campaigning for President Reagan—but we didn't have the opportunity to do that.

We'll put the question to the President because we'll send him a nice bill to sign in the next few months.

Ms. PINA. Mrs. Heckler, I want to comment on her.

Last year when she was running for Congress, she wrote the ad hoc committee a letter stating: "Which I gave your office a copy of," that she disapproved of the Reagan administration's handling of disability. Now that she's HHS Secretary she is now saying screw you all. That's exactly what she is saying. I'm sorry I had to use those words, but that's exactly what she's saying.

Mr. SHANNON. Let me also say, since we are going to be getting into this overpayment issue, that if you have cases of where people have been chased for overpayment—that you want us to try to address—please send them to my office and we'll bring them up during the course of the hearing.

[The following was subsequently received:]

MARCH 6, 1984.

To The Subcommittee on Social Security, Committee on Ways and Means, House of Representatives, Washington, DC:

Thank you for the privilege of allowing me to testify before your committee on February 24, 1984 at the hearings in Boston.

I would like to have a further statement included in the printed record on suicides. This is something that haunts me.

I will start first with the attempted suicide. I got a call from a man who had his benefits terminated and like the rest of us could not understand why. When it got to the point where he could no longer endure going to doctor after doctor he took an overdose of sleeping pills. They found him in a hotel room near death and he was in intensive care for three days. With his permission I am including a copy of the suicide note that he left and a copy was given to me by his family. I hope this is made a part of the printed record with his name being excluded.

A man that I knew in Revere Ma. committed suicide. He was one of the first ones to be cut off of benefits in 1981. He committed suicide in June of 1981. I talked to him a few days before he disappeared. In this last conversation he told me not to trust those bastards at the Ma. DDs. as they were going to cut off his disability benefits (SSDI). I had no inkling that he was going to commit suicide.

I got a call from a mutual friend of ours asking if I knew where he was and I didn't. The Revere police asked me if I had any idea of what happened and I didn't.

Two weeks later I got a call from the same friend telling me they found him. His body was found in a storage bin in his neighbor's cellar. (This was a duplex). His body was found under a blanket and his brains were splattered over a wall. He shot himself in the head. It wasn't until the smell became so bad that they found him. It was six months later that I learn the truth about this suicide.

The end of December of 1981 I met with a reporter, Alan Lupo, of the Boston Phoenix, and gave him a memo that was given to me from someone who worked for Social Security. This is the memo that my friend wrote on "Esther, see what you can decipher". Talking about CDI's it read "It goes without saying that much of this information is definitely not intended to be made known to the public or the press due to their flair for misunderstanding and slanted reporting, but you are entitled to see the whole picture. It was this memo that led to the Boston Phoenix expose on SSDI terminations, Jan. 26, 1982. That was when I learn of my friend's real reason for his suicide.

In the article it said that he could no longer support his family and that his only means of income was taken away from him. This was included in part of the suicide note.

He was a staunch Republican who voted for the President and defended him but couldn't understand why people were being treated like this from DDS.

Once in a while when I wake up during the night, I can still hear his voice and I still can't believe that he's gone. We spent many hours on the phone comparing notes because we both had the same doctor. I still feel that there is something that I could have done only if I had called him back and talked about what happen. This is the reason that I can't sit back and watch what's happening and not do all I can for the SSDI problem so that there won't be any more victims of the Reagan administration's policies.

Sincerely,

ESTHER PINA,
Chairperson, Ad Hoc Committee,
Social Security Disability.

MAY 20, 1983

I went to see my lawyer Mr. Gately Tuesday the 17th of May and was very disappointed when he told me he couldn't represent me at my appeal hearing on June 1st with Judge Donald P. Ryan because he had other cases that day. I had a lot of confidence in him and this hurt very much.

He turned me over to John D. Hislop III who may be very good, but I was very displeased and depressed at what he told me, of all my medical evidence in my favor might be for not, that the judge will figure I've been on disability for twenty years and that I'm only fifty years old and that that will be two strikes against me.

I thought decent people would go by doctors who know you and not put you through criminal trial. The only criminal thing I've done is to get hurt on the job and live in constant pain and misery for the last twenty years and this physical and mental anguish has come to a head, I just can't stand anymore.

I'm very sorry for my family for what I've done but I just can't go on, and this isn't a coward's way out, this takes a lot of guts. Mike, I love you like all the rest of

the family but you're head strong and help Mommy and don't give anyone a hard time.

Lorraine, make sure you make a copy of this letter to give to the "lawyer judge" so they can cancel the hearing.

They finally got me off their books, I hope they're happy.

May "God" have mercy on my Soul.

Love,

———— ————.

P.S. Make sure Esther Pina gets a copy of this and the three update letters, I may help someone in the future the way they're doing things.

(By Mark Trachtenberg)

Esther Pina's voice was wavering as she read the suicide note written by a man with a paralyzed arm and paralyzed leg whose social security disability benefits had been cut off last October.

According to Pina (the chairperson of the Ad Hoc Committee on Social Security Disability) the Massachusetts Disability Determination Service (DDS)—the agency which administers the disability program for the U.S. Social Security Administration (SSA)—had ignored the reports of four different physicians, including one from the state's own Industrial Accident Board, in terminating the man's benefits. Instead, Pina said that the DDS sent the man to five different doctors of its own and ended his benefits in large part because he refused to undergo more X-rays—which his own physician told him posed a serious risk of cancer.

"I can't fight them anymore," the man wrote in his note, before his unsuccessful attempt to kill himself.

Pina told this story at a field hearing before the U.S. House of Representatives' Select Committee on Aging last week at the Massachusetts State House.

The hearing, chaired by Fourth District Congressman Barney Frank, drew testimony from many other recipients of disability benefits, as well as Governor Michael Dukakis, Newton State Representative Joseph DeNucci and Brookline Senator Jack Backman.

Dukakis blasted the Reagan Administration for "arbitrary, cruel and heartless" implementation of social security regulations.

"The safety net has not only been punctured, but ripped apart," Dukakis said. The state has threatened to sue the Reagan Administration over the issue.

However, Dukakis noted the commonwealth has implemented a six-point plan to make its disability program more humane, and that the SSA has expressed interest in using the plan as a national pilot program if the state drops its suit. As The Tab went to press, negotiations between the state and federal government were continuing.

According to state Massachusetts Secretary of Human Services Manuel Carballo, one of the administration's major concerns is that the federal government accept state implementation of recent court rulings protecting the benefits of the mentally ill—whose condition often gets worse when their payments are cut off, according to many who testified at the hearing.

According to the testimony however, the mentally ill are not the only ones adversely affected by the threat of a disability benefit cutoff.

Ken Sousa whose right arm is paralyzed, had his benefits terminated last year. The decision was recently reversed by an administrative law judge—but two days later, he had a heart attack, his wife testified. She also said the DDS had told him to amputate the arm in order to go back to work.

Social worker Maxine Romanov told the committee that the effect of the cutoffs is "strain, disillusionment and suicides." She added that whatever money the SSA is saving through the cutoffs is being passed on to the states in added welfare costs. Romanov said that in dealing with many of her disabled clients, the DDS lacked vital medical information.

Pina charged that the DDS has been sending claimants for repeated examinations in order to get the desired medical opinion, as well as to psychiatrists to get an opinion that an illness is phychosomatic. "The doctors put you through a criminal trial," Pina said.

Although Backman and DeNucci, co-chairmen of the state legislature's special commission on disability benefits, told the committee that the state has made considerable progress recently in reforming its disability program, Pina has her doubts. She said she had received six new complaints within the past two weeks.

According to DDS unit supervisor and union official Ed Donnelly, there has been considerable confusion within DDS over the implementation of the new six-point plan. While Donnelly is optimistic that the problems can be worked out, he said the wrong interpretation of one of the new standards "could put us right back where we started."

Donnelly said he had no knowledge of examiners sending claimants for repeated examinations in order to get the "right" opinion.

Mr. SHANNON. First, thank you for your testimony.

Let me explain to you how we're going to use your testimony. This bill will be coming before the House in the next couple of weeks and we've been on a long road but I think we are coming to the end.

What we have to do is get the bill through the House, through the Senate, and get it through the conference committee. And we're going to need lots of good arguments when we're doing that. Mr. Pickle and I and the other members of the subcommittee who will be dealing with this issue will need lots of good arguments to make our point. We have the arguments in the record of this hearing and we will use the record in that way.

So you're coming here today has been very, very helpful. I know its been a long struggle for everybody in this room but we've made an awful lot of progress. Remember, we started out with individual cases. Damian Ivanof was one of the first people who came into my office with his case and its gone from there to a grassroots movement, from dealing with individual cases to dealing with national legislation.

We got the bill out of the committee. We'll get it to the House of Representatives and we'll just keep pushing it until we succeed. Your help in that by being here today and everything that you have done has been extraordinary. We wouldn't be this far without all of it. Keep your chins up and we'll get the bill through.

I also want to say that I really appreciate the fact that Mr. Pickle was able to come here today. He has been a great, great supporter of the disabled. And we want to thank the staff, Miss Dilley and, of course, Dan Adams. Chuck Brain was here earlier. We'll get this legislation through.

This hearing is adjourned.

[Whereupon, the hearing was adjourned.]

[Submission for the record follows:]

STATEMENT OF THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

New York State is extremely concerned regarding the present confusion and disarray that exists in the Federal Disability Program. We therefore welcome the opportunity to present our concerns on, and recommendations for, correcting the present situation.

Although major changes are needed in all areas of the disability program, the most immediate need is for elimination of the harsh and restrictive Continuing Disability Review (CDR) standards being applied and for immediate action to end the confusion and disarray surrounding the continuing disability review program.

The review program, initiated without proper planning in 1980, has had major negative impacts on the disabled, the states, and the Federal government. Tens of thousands of truly disabled individuals have lost their benefits and have suffered unnecessary physical, emotional and financial hardships. Many of these individuals, because of their disabilities, have little prospect for engaging in substantial gainful activity. At the present time, no national CDR program exists. Individual District and Circuit Court decisions have imposed different standards than SSA's, many states have been forced to take their own actions and Congress has not acted to set new standards.

Since the initiation of the CFR program, New York State has expressed its grave concerns regarding the lack of planning and appreciation for the hardships the CDR program would produce. In 1980, Congress anticipated a maximum of 20% potential cessations, yet during its first years, the CDR program produced cessations of over 45%. Recipients of disability benefits, who had been disabled for many years, were unjustly made to assume the burden of proving their continued disability.

The harshness and lack of appropriate CDR standards was clearly shown by reversal rates of 65-75% being made by ALJ's and by the massive public outcry. Enormous numbers of disabled people were being unnecessarily removed from disability under SSA rules, and then returned to the rolls after appeal. Clearly, the most disadvantaged were the mentally disabled who, in many cases, were unable to understand or respond to what was happening.

In the two years following implementation of the CDR program, the problems identified at the outset were compounded and exacerbated by frequent and inconsistent changes in SSA's policies and procedures. We in New York have consistently taken a leadership role to insure that our disabled citizens would be appropriately protected from the harshness and inequities of the CDR process. We have implemented a number of reforms including:

Intensive additional quality control procedures designed to insure that medical evidence gathering has been thorough and that it has been examined appropriately in decision making.

Procedures to insure that SSA has followed all necessary steps to contact individuals whose cases are being reviewed so that individuals are not simply removed for failure to cooperate; an action of great concern particularly for the mentally ill.

Extensive outreach programs with provider and advocacy groups to assist clients in negotiating this cumbersome and difficult CDR process; a process which has been extremely difficult to negotiate even for the most well informed recipient.

Maximization of the use of information from the recipient's treating source in decision making rather than reliance on information provided by physicians under contract to the disability program.

A set of case decision criteria which appropriately insure that the benefit of the doubt is given to recipients in borderline cases.

All these actions have resulted in a 25 percent increase in the number of clients retained on the rolls who otherwise would have been illegally removed.

Despite these efforts, however, some 25,000 New Yorkers have been removed from the disability rolls and it is estimated that at completion of the review program, if the same trends persist, as many as 100-150,000 New Yorkers could ultimately lose their benefits.

As has been the experience in the rest of the nation, the numbers of people removed has far exceeded the expectations of Congress, when it passed CDR legislation in 1980.

There is clearly a very fundamental problem in SSA's implementation and operation of this program that goes well beyond procedural and administrative matters. The problem centers on the unreasonable and illegal burden of proof required of recipients in order to continue on the disability rolls; a burden which has resulted in removal from the rolls of tens of thousands of our most vulnerable citizens.

For that reason, and in addition to the procedural and operating improvements that we have implemented, we have continually sought from both Congress and SSA basic changes in the definition of disability. These changes in definition would require SSA to establish that there has been medical improvement in a recipient's condition before that recipient could be removed from the disability rolls.

This position was supported by a court decision in the state of Washington which required proof of medical improvement before an individual could be removed from the disability rolls. At the time of that decision, it was clear that the nine states within that particular court circuit would eventually be following a more liberal standard than the one that would be applied to the disabled citizens of NY state. This, coupled with SSA's improper implementation and operation of the program, made the program intolerable. Therefore, on July 22, 1983, NYS imposed a temporary suspension on the removal of disabled individuals from the Social Security rolls until such time as the Federal government established equitable and uniform medical standards of evaluating the continued disability of Social Security recipients.

We were followed in this action by eleven other states and by the Social Security Administration itself, which has imposed a national moratorium on cessations pending resolution of various CDR issues.

In addition to the administrative actions that we have taken, New York State has brought several lawsuits against SSA's rules and regulations. On January 11, 1984, the New York Federal District Court ruled that SSA's policies regarding the men-

tally ill were illegal and ordered reinstatement of benefits and re-review of all NYS denials and cessations since 1980. This decision reinforced the correctness of the actions NYS took and is evidence that the courts are holding the Federal government to the same standards we have advocated all along. This decision, which could affect as many at 60,000 cases in New York, is only one of many Federal Court decisions that have held the CDR rules and standards are harsh and illegal.

It has become increasingly clear that there is no uniform national CDR standard and that there is a critical need for Congress to act immediately to correct the inquities in the program and re-establish a national program. It is also critical that Congress liberalize the present unfair and harsh process which places an unfair and illegal burden of proof on the disabled to prove their continued disability.

Clearly, SSA is unwilling or unable to react to these major issues. NYS knows Congress has devoted much time and very serious attention to the disability program. There has been much study and discussion of the problems and proposed solutions. Congress must act now to reform this program.

In order to correct the inequities of the program and to eliminate the present state of disarray and confusion, New York State has, and continues to, support passage of legislation similar to the Pickle and Cohen/Levin bills. We strongly urge this committee to support and move on such legislation immediately.

The most critical parts of these bills are the establishment of a medical improvement standard and the extension of continuation of benefits during appeal. We believe that requiring medical improvement before cessation, giving appropriate consideration to previous error is fair to all parties. Our reviews have indicated that applying such a standard would, while providing more equitable decisions, remove from the disability rolls those recipients clearly not disabled. A Medical Improvement standard would overcome the burden of proof issue.

The application of a Medical Improvement standard should achieve fiscal savings approximately equal to those anticipated by Congress in 1979. However, we would anticipate a significant reduction in the 65–75% CDR cessation reversal rate. Further, the significant administrative cost of appeals and unnecessary negative impacts on the disabled would be diminished.

In August 1983, NYS presented SSA a proposed outline of a medical improvement standard which we believe meets the mandate of the six Federal Court decisions which have imposed a medical improvement standard. Governor Cuomo recently wrote Secretary Heckler on this issue and provided her with a detailing of the concept and operation of this standard.

While we urge rapid action on the proposed legislation, we would also urge SSA and Congress to give consideration to other proposals we have made.

These include: Changing the basic definition of disability, considering time on rolls in CDR evaluation, extending adjustment benefits to six months, increasing state control over CDR decisions, providing uniform adjudication standards at all levels of the process, emphasizing correctness of individual case decision as opposed to statistical compliance and productivity, and expanding emphasis given to treating source data and on innovative approaches to determining disability.

New York is seriously concerned that unless needed changes are made, the CDR program will continue to unnecessarily negatively impact and penalize the truly disabled. The need for Congressional action to eliminate the unfairness and harshness of the CDR process and end the present confusion and turmoil is clear. Congress must act expeditiously if we are to avoid further disarray in the program and hardship to our disabled citizens.

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